

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285
et al. :
Plaintiffs :
V. : Washington, D.C.
: Thursday, October 11, 2007
:
DIRK KEMPTHORNE, Secretary :
of the Interior, et al. :
:
Defendants : MORNING SESSION

TRANSCRIPT OF EVIDENTIARY HEARING
DAY 2
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:

DENNIS GINGOLD, ESQUIRE
LAW OFFICES OF DENNIS GINGOLD
607 14th Street, NW
Ninth Floor
Washington, DC 20005
(202) 824-1448

ELLIOTT H. LEVITAS, ESQUIRE
WILLIAM E. DORRIS, ESQUIRE
KILPATRICK STOCKTON, L.L.P.
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6450

KEITH HARPER, ESQUIRE
JUSTIN GUILDER, ESQUIRE
KILPATRICK STOCKTON, L.L.P.
607 14th Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 585-0053

DAVID C. SMITH, ESQUIRE
KILPATRICK STOCKTON, L.L.P.
1001 West Fourth Street
Winston-Salem, North Carolina 27101
(336) 607-7392

For the Defendants:

ROBERT E. KIRSCHMAN, JR., ESQUIRE
JOHN WARSHAWSKY, ESQUIRE
MICHAEL QUINN, ESQUIRE
J. CHRISTOPHER KOHN, ESQUIRE
JOHN KRESSE, ESQUIRE
U.S. Department of Justice
1100 L Street, N.W.
Washington, D.C. 20005
(202) 307-0010

JOHN STEMPLEWICZ, ESQUIRE
Senior Trial Attorney
U.S. Department of Justice

Commercial Litigation Branch

Civil Division

Ben Franklin Station

P.O. Box 975

Washington, D.C. 20044

(202) 307-1104

Court Reporter:

REBECCA STONESTREET

Official Court Reporter

Room 6415, U.S. Courthouse

333 Constitution Avenue, N.W.

Washington, D.C. 20001

(202) 354-3249

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E X H I B I T S

NUMBER

ADMITTED

(No Exhibits Moved into Evidence.)

1 P R O C E E D I N G S

2 THE COURT: Couple of preliminary matters. First of
3 all, Mr. Dorris, I did you a disservice of making a remark about
4 you beating up on the witness yesterday. You weren't beating up
5 on the witness, and I think the record should probability
6 reflect -- that is insurance the record doesn't reflect small
7 efforts at humor.

8 MR. DORRIS: Thank you, Your Honor.

9 THE COURT: Secondly, there is a pending motion.
10 Defendant has filed a motion to file a status report on or
11 before February 1st, 2008. There's been briefing back and
12 forth. That motion is granted.

13 Mr. Dorris, do you want to continue your
14 cross-examination?

15 MR. DORRIS: Thank you, Your Honor. Good morning.

16 THE COURT: For the clerk's benefit, that's docket
17 number 3420. Do you believe that, Mr. Dorris?

18 MR. DORRIS: Not really.

19 CONTINUED CROSS-EXAMINATION

20 BY MR. DORRIS:

21 Q. Good morning, Mr. Cason.

22 A. Good morning.

23 Q. Just a few areas to cover with you this morning, and I'll
24 try to be quick. Okay?

25 A. Okay.

1 Q. In looking at the administrative record, I have found few if
2 any what would be called secretarial decision documents.

3 Did you, in connection with the 2007 plan, execute any
4 decision documents other than the one statement at the front of
5 the plan that said: Here's the plan?

6 A. We did not execute documents all the way to completion. We
7 did have drafted, on issue-by-issue basis, several drafts about
8 particular issues that we discussed several times. And in the
9 end, we didn't end up signing those particular documents. The
10 decisions were incorporated into our 2007 plan.

11 Q. And in terms of the thinking behind some of the decisions
12 that are reflected in the 2007 plan, then we are not going to
13 find anywhere in the administrative record, to the best of your
14 knowledge, documents that actually reflect why and how those
15 decisions were made. Is that correct?

16 A. I don't know that. I don't know all the documents that are
17 in the administrative record.

18 Q. Okay. Let me just ask, with respect to documents that you
19 would have executed, you don't recall executing any such
20 documents reflecting your decisions, other than the 2007 plan
21 itself. Is that correct?

22 A. No, I do recall they were not completed. The decisions were
23 made, and they were incorporated into the 2007 plan.

24 Q. Okay. Now, one of the items in the 2007 plan that is not
25 mentioned is any accounting or looking at administrative fees

1 that may have been deducted from accounts or deducted from funds
2 that were received as a result of leases or other activity on
3 IIM lands.

4 You're not aware of anything in the 2007 plan that
5 talks about accounting for those administrative fees, are you?

6 A. I'm aware that there are a handful of administrative fees
7 that are charged for particular programs. A mention was made
8 yesterday about the timber program.

9 In large part, for most of our program, we don't charge
10 fees. And it's my understanding that the way we address the fee
11 issue is that we place the net receipt on the books of an
12 individual, rather than a gross receipt minus the fees.

13 But I'm sure there's others who can testify more
14 clearly about that.

15 Q. Okay. Well, if that's something that another witness can
16 cover better, I understand. But it is your understanding,
17 though, that at least in instances, certain instances,
18 administrative fees are charged for the Department of Interior
19 as the trustee delegate performing some of its activities on
20 behalf of the IIM beneficiaries?

21 A. In a few cases, that's true.

22 Q. Okay. And there is -- you do understand there is a broad
23 statutory authorization for Department of Interior to charge
24 such fees. Correct?

25 A. I don't know how broad the statutory authority is. I know

1 in the cases where we charge them we have statutory authority to
2 do so, but I don't know how broadly it goes.

3 Q. I'm going to ask that we bring up on the screen 25 U.S.C.
4 Section 413, just to see if you are familiar with this document,
5 or this statute, Mr. Cason. And it deals with fees to cover
6 costs of work performed for Indians, and indicating, "The
7 Secretary of the Interior is hereby authorized in his
8 discretion, and under such rules and regulations as he may
9 prescribe, to collect reasonable fees to cover the cost of any
10 and all work performed for Indian tribes or for individual
11 Indians to be paid by vendees, lessees, or assignees, or
12 deducted from the proceeds of sale, leases, or other sources of
13 revenue." And then it goes on with the provision.

14 Do you see that?

15 A. Yes.

16 Q. And were you aware of this statute before I've just shown it
17 to you?

18 A. Not in particular, no.

19 Q. So while you, I think, understand that in certain
20 instances - for example, with timber sales - fees are charged,
21 administrative fees are charged by the Trustee, in this instance
22 you're not aware of the full extent to which the Trustee either
23 has or could, by law, charge fees for its work. Is that right?

24 A. That's correct.

25 Q. But it would be fair to say that part of the -- that the

1 2007 plan is not going to tell the beneficiaries how much
2 administrative fees have been deducted from their Trust funds.

3 Is that correct?

4 A. That would be my understanding.

5 Q. And was that a decision that was made, to not tell the
6 beneficiaries that?

7 A. I don't recall having a conversation to that point. In
8 briefings that I've had, it's my understanding that that's how
9 we do our work.

10 Q. I understand that's how you do your work. But in other
11 words, this is really a topic that was never discussed in
12 connection with the decisions you made regarding the 2007 plan
13 or any of the other plans, to the best of your knowledge?

14 A. The best of my knowledge, no.

15 Q. Now, I don't know that I'm -- I'm not trying to quote you
16 exactly, but there was a phrase in one of your answers yesterday
17 that I recalled over the evening. It was something about -- I
18 was asking you about MMS and the money coming into Treasury, oil
19 and gas revenues. And I think you said something like, "There's
20 not money rattling around either MMS or Treasury."

21 Do you remember words essentially to that effect?

22 A. Yeah, generally.

23 Q. Let me ask that. With respect to Treasury's accounts for
24 the IIM funds, and Interior's accounts, those two sets of books
25 do not always reconcile, do they?

1 A. I've been told that, yes.

2 Q. In fact, have you been told that they've never been
3 reconciled over the history of this Trust?

4 A. I've heard it asserted.

5 Q. Whether it's true or not, you don't know. But you've heard
6 it asserted?

7 A. Yes.

8 Q. Asserted by the plaintiffs?

9 A. Yes.

10 Q. And asserted by others inside Treasury and Interior.
11 Correct?

12 A. The limit of my knowledge that I'm aware, there's a
13 difference of \$6 million between what we have in the fund and
14 what our books show. That's an amount of money that we've gone
15 back to Congress on several occasions, to ask for
16 appropriations.

17 It's, in the short term, not a problem unless we have a
18 big run on the bank. But it is a problem we're trying to fix.

19 Q. Now, that six million, as I've seen in the administrative
20 record, is where Interior's TFAS system, where you take the
21 control ledger off of TFAS, does not reconcile with the total of
22 all the subsidiary ledgers on TFAS by as much as \$6 million?

23 A. Yeah.

24 Q. Is that what you were just talking about?

25 A. Yes, uh-huh.

1 Q. Now, my question was not asking if Interior's own TFAS
2 system reconciled with itself.

3 A. Uh-huh.

4 Q. Okay. But I understand you to indicate it's as much as
5 \$6 million off, even within that same system.

6 My question was, the accounts at Treasury for the IIM
7 funds and the books of Interior don't reconcile by millions of
8 dollars for most if not all of the years of the history of the
9 Trust. Is that correct?

10 A. I don't know that. You would need to ask that to somebody
11 else.

12 Q. But you are aware, at least in some of the years since
13 you've been involved, that Treasury and Interior books have not
14 reconciled. Is that correct?

15 A. I'm aware that we work with Treasury on the issue. I'm not
16 sure what the results are.

17 Q. One of the issues that has come up in some of the pretrial
18 briefing for this hearing has to do with the Youpee escheated
19 interests. Are you familiar with that language?

20 A. Yes, I am.

21 Q. And under Youpee, the Supreme Court decided that the
22 escheatment of certain beneficial interests had been
23 unconstitutional, and that's where those interests -- the
24 government had taken those interests and transferred them from
25 individuals to tribes. Do you recall that?

1 A. Yes, I do.

2 Q. And what is the status of the return of those beneficial
3 interests to the beneficiaries?

4 A. I don't know the end point of it. I know there have been
5 efforts over the past decade or so to try and clean up that
6 mess. Congress had an inspired idea to turn over those small
7 interests to tribes, and the Bureau of Indian Affairs acted on
8 that idea. And since acting upon it in the Supreme Court
9 decision, we've been trying to unwind that action.

10 I know that some actions have been taken to restore to
11 estates Youpee interest, or to try to purchase interest, but I
12 don't know the exact status of all of those interests right now,
13 where they are.

14 Q. And I've seen references in some documents that there were
15 in excess of three-quarters of a million such beneficial
16 interests that were escheated. Does that number sound about
17 right to you?

18 A. I've seen that noted. I don't know how accurate that figure
19 is. Because the underlying number that were actually escheated
20 were much fewer than that, and the 775,000 looked like an
21 extrapolation. But I don't know what the basis is.

22 Q. And that number that I mentioned were numbers that are
23 reflected in some of Interior's own documents. Correct?

24 A. Yes.

25 Q. The 775,000?

1 A. I believe so.

2 Q. And those aren't 775,000 beneficiaries. Those are separate
3 beneficial interests that a particular beneficiary may have more
4 than one in that group. Correct?

5 A. Yeah. Generally, what happened in this case is all of these
6 interests that escheated under law were all less than
7 two percent interest. And the 775,000 figure, it's my
8 understanding it just reflects a subdivision basically by 10 of
9 all those interests into .02 percent percentages on average.

10 So they're very tiny interests, and it's very costly to
11 reverse all of these actions. But the department is acting on
12 it.

13 THE COURT: Mr. Cason. Excuse me, Mr. Cason. You lost
14 me there. A subdivision interest by 10. I don't know what that
15 is.

16 THE WITNESS: Your Honor, within Interior we have this
17 challenge called fractionation. And if I can start an example:
18 Way back when --

19 THE COURT: I'm generally familiar with fractionation.

20 THE WITNESS: With fractionation, okay.

21 THE COURT: Is that what you're referring to?

22 THE WITNESS: Yeah. It's basically the fractionation
23 that happens with these interests that, when we escheated them
24 out of estate accounts, we escheated, as I understand, about
25 75,000 interests. But the projection was that those would be

1 subdivided by 10, to about 775,000, with further fractionation.

2 THE COURT: You didn't escheat them out of it. That
3 could be misinterpreted. The escheat laws operated. But go
4 ahead.

5 THE WITNESS: Okay. That's probably a better way to
6 say it.

7 And so, with further fractionation, we have many, many
8 more interests to try to recapture and address.

9 BY MR. DORRIS:

10 Q. Where I'm headed is this: As far as you know, there are
11 still some escheated interests that have not been returned to
12 the correct beneficial owners. Is that correct?

13 A. No. What I said is, I don't know the status. I know in
14 prior actions I had asked for all of them to be addressed, but I
15 don't know whether all of them have been.

16 Q. Okay. And it was your anticipation that when those
17 interests would be returned to the beneficial owners, that the
18 income from those interests, regardless of what the size of it
19 was, during the time that they had been unconstitutionally
20 escheated to someone else, those funds were going to be placed
21 back into the beneficiary's account. Is that right?

22 A. That was one of the options. Another possible option is to
23 actually purchase the escheated interest and pay fair market
24 value to the beneficiary. And if that were to happen, I'm not
25 sure what would happen with any income associated with that

1 period of time. So I don't know all the possibilities.

2 Q. Well, were those just the two options that were being
3 discussed?

4 A. I don't know. There may be other options, but those are the
5 principal ones I'm aware of.

6 Q. And have you made any decisions with respect to that, with
7 regard to the 2007 accounting plan?

8 A. No.

9 Q. So the 2007 accounting plan does not provide an accounting
10 for any of the escheated interests that may not have yet been
11 returned to the beneficial owners. Is that correct?

12 A. No, I wouldn't say that. The escheated interests will be
13 somewhere in the system. And what I mean by that is, either
14 they end up with -- well, I suppose that's a possibility.
15 Because if they got escheated to a tribal account, it wouldn't
16 be recorded in an individual account.

17 So to the extent that they still reside in a tribal
18 account and have not been reversed, I think that's a
19 possibility.

20 Q. But do I understand, is this right, that as part of the
21 accounting plan moving forward, you do intend to account to the
22 beneficiaries for the escheated interests that are not purchased
23 by the government. Is that correct?

24 A. No, because that would be an accounting for land, and we're
25 not doing an accounting for land. There is another interest for

1 the money associated with it if that land is leased, and I don't
2 know the answer to that.

3 Q. Okay. My question was really intended in terms of any
4 income that has come off the lands that were covered by the
5 escheated interest. The Department of Interior does plan to
6 account for those. Correct?

7 A. I don't know the answer. It wasn't an item that was
8 discussed directly.

9 Q. So like administrative fees, this is something that you've
10 not yet decided, is not covered by the plan one way or the
11 other?

12 A. That would be true.

13 Q. And you've not made any decisions on that yet?

14 A. Yes.

15 Q. Yesterday we talked for a few minutes about, and I think you
16 in one of your answers talked about, the land to dollars test.
17 And I think Judge Robertson even asked you a question about
18 that. Do you recall that?

19 A. Yes.

20 Q. And this lands to dollar test arises because if you go in
21 and just look at receipts that are posted to a few individuals'
22 accounts and attempt to reconcile those, that does not tell you
23 about any income that was received that was not properly posted.
24 Correct?

25 A. Well, it addresses that potential.

1 Q. And as I understood what you said, there had been a pilot
2 test for the land to dollars. Is that correct?

3 A. I'm not sure where you're going with that.

4 Q. I'm just trying to set the stage for the question, to make
5 sure we're all in sync as we move forward.

6 Did I understand you to testify yesterday that there
7 had been a pilot test by the Department of Interior with respect
8 to this issue of tracing the dollars from the land or leases of
9 the land to the accounts?

10 A. I think the pilot discussion we had was about Alaskan
11 Eastern, and the pilot discussion was on data completeness, as
12 opposed to land to dollars test.

13 We are acting on a land to dollars test, but I don't
14 think it's in the guise of a pilot, as you're talking about.

15 Q. Okay. So would it be fair to say that you're not -- are you
16 knowledgeable about the status of the land to dollars testing?

17 A. I don't know how many samples have been taken and what the
18 results are. I'm aware that we're doing it, but I don't know
19 what the results are. Others can testify about that better than
20 I can.

21 Q. Let's look at the plan for a second. If you would go to the
22 administrative record, Bates 33-2, page 21. And the top part of
23 this page deals with posting test, land to dollars test.

24 A. Yes.

25 Q. And do you see that?

1 A. Yes.

2 Q. This is from the 2007 plan?

3 A. Yes.

4 Q. Do you recognize that?

5 A. Yes, I do.

6 Q. Let me give you a moment to read that, to refresh your
7 recollection.

8 A. (Witness complies.) Okay. They use the term "pilot test."

9 Q. Okay. So to the best of your knowledge, looking at this,
10 does this refresh your recollection that at least one pilot test
11 has been performed?

12 A. Okay. I wouldn't have used the term pilot test, but okay.

13 Q. Okay. But this is what's used in the plan?

14 A. Yes.

15 Q. And why wouldn't you have used the word pilot test?

16 A. Well, from my standpoint, I think this is just another test
17 that we do, and that we're pulling these records and examining
18 the records to identify whether we can identify any problems. I
19 just didn't think about it in terms of being called a pilot
20 test.

21 Q. Fine. And do you know at what agency this test was
22 performed?

23 A. I don't. And I'm not sure it's agency-specific, as opposed
24 to just pulling records that may be selected at random. But we
25 have others that are coming up that can testify specifically

1 about what happened.

2 Q. I understand. And you're the decision-maker, so I'm trying
3 to find out what you knew at the time of your decision.

4 Did you know the details of this test, whether it's
5 called a pilot test or not, when you made your decision?

6 A. I knew that we were planning this test. I just didn't
7 recall that was framed as "pilot test." I knew what it was for.
8 I've asked for general results, but I don't know the specifics.

9 Q. All right. Let me ask this: If I tell you that I have a
10 document that is dealing with a pilot test for this from the
11 Horton Agency, does that ring a bell with you at all?

12 A. No.

13 Q. Let's look at document 38-1, on page one. And this is a
14 NORC document. You're not shown as having received this
15 document. And I will tell you, without us turning to the end,
16 you're not shown as a copyholder on this memo either. Okay?

17 A. Okay.

18 Q. But it's from Ms. Hinkins to Mr. Zippin. And do you see the
19 subject, "Land to dollar completeness test at Horton Agency"?

20 A. Uh-huh.

21 Q. And this is March 31, 2007, one of the more recent documents
22 we've actually looked at. Okay?

23 A. Uh-huh.

24 Q. And have you, to the best of your knowledge, seen this
25 document before?

1 A. I don't remember seeing it, no.

2 Q. And you don't remember anybody reporting to you on what the
3 testing at the Horton Agency showed. Correct?

4 A. No.

5 Q. All right. I'm not going to ask you about the results of
6 that test, then, and we'll ask others. But I do want to ask you
7 about two statements that are made here to see if these were
8 discussed with you and what your understanding is about two
9 general concepts that are referenced in this document. Okay?

10 A. Okay.

11 Q. If you would look at the bottom of the first paragraph.
12 You're all the way at the bottom of the page, I'm sorry. Back
13 up at the first paragraph.

14 Okay. Look about halfway down, a little more than
15 halfway down, in the middle of the screen there. It says, "The
16 LSA project has provided sound estimates of the error rate among
17 posted transactions, but because the starting point for the LSA
18 project was a recorded transaction, any failure to collect,
19 deposit, and record collection transactions would likely not
20 have been discovered in LSA project testing." Do you see that?

21 A. Yes.

22 Q. And do you agree with that statement?

23 A. Yes.

24 Q. Okay. And that was understood, as one of the parts of the
25 LSA testing, that something else needed to be done to try to

1 address this concern. Is that right?

2 A. Well, it was our intention to try to provide reasonable
3 assurances for possibilities where the direct project wouldn't
4 cover possible errors. So this is one of the tests we were
5 doing.

6 Q. And the concept behind this test is to go out and get all of
7 the leases that have to do with particular pieces of property or
8 allotments, and then see if funds from those leases that would
9 be expected from those leases actually show up in beneficiaries'
10 accounts. Is that right?

11 A. Well, I think generally yes. Whether you start with land or
12 you start with leases, yes.

13 Q. But one of the problems, of course is, is there's not a
14 comprehensive set of leases, is there?

15 A. Well, what do you mean by that?

16 Q. Let's look at the last paragraph on the page, right at the
17 bottom of that paragraph. Up three lines from the bottom of
18 this last paragraph on page one of AR document Bates 38-1, as
19 I've been referring to them, Ms. Hinkins writes, "Developing a
20 comprehensive list of all leases or contracts or permits that
21 have been issued for the electronic records era, however, is
22 often intractable." Do you see that?

23 A. Yes.

24 Q. Now, first of all, she's only talking about leases during a
25 time period of 1985 forward. Correct?

1 A. Yes.

2 Q. I mean, this isn't even dealing with the history before 1985
3 for a statement. Do you understand that?

4 A. Yes, I do.

5 Q. I have to admit, I had to look up what "intractable" meant
6 in the dictionary, and I found that it meant a number of
7 definitions. But the one that seemed to fit the best was "Not
8 easily controlled." Would that be your understanding of that
9 work?

10 A. I think that's reasonable.

11 Q. And did you understand this, or do you agree with this
12 statement that Ms. Hinkins makes here?

13 A. Well, since I don't think I've seen it before, I didn't have
14 an understanding of it. In reading it right here, I think there
15 may be some difficulty in getting a comprehensive list of all
16 leases that we had in BIA. I don't know what the implications
17 of that are, because a lot of leases are easily available. I
18 don't know how far they have to go in order to get a
19 statistically valid set.

20 So I'm not sure what the end difficulty will be with
21 this from this statement.

22 Q. Well, without having assurance that you've got a
23 comprehensive set of the leases, at least one of the
24 implications is that any tests that you then do from a set of
25 the leases that may or may not be complete, you could not still

1 be sure whether or not all of the money that was generated from
2 leases of those lands found its way into an IIM beneficiary's
3 account. That's at least one of the problems that may come from
4 not having a complete set of leases. Would you agree with that?

5 A. No. My sense is, this is another item of: The perfect is
6 the enemy of the good.

7 Q. Could you start again? I did not hear that.

8 A. Yeah. It's my sense this is a thought where the perfect is
9 the enemy of the good, that this is a test of whether or not we
10 can actually trace documents from lease, through the system, in
11 the opposite direction from what we're doing our accounting,
12 which is start with the transaction and reconcile backwards.

13 It strikes me that we don't have to have a perfect list
14 of all of the leases that have ever been, in order to take a
15 sample of those to actually trace them the other direction.

16 So I guess I would not agree with your conclusion that
17 I have to have them all before I can do anything.

18 Q. Would you agree that if you don't -- if you can't be sure
19 that you have them all, then the conclusions you can draw from
20 the tests will not be as clear or as meaningful?

21 A. I don't know that. Someone else is going to look at the
22 statistics.

23 Q. And has the Department of Interior gone to third parties to
24 try to obtain any of the leases that may be missing and make it
25 intractable to find them within BIA?

1 A. I don't know that.

2 Q. Does BIA maintain the leases, or BLM?

3 A. BIA does.

4 Q. Do any other agencies or bureaus maintain leases of IIM
5 lands?

6 A. You mean, like store them?

7 Q. Yes.

8 A. I don't know if someone else has extra copies of leases.

9 The task is BIA's task to do. But the Department of Interior is
10 a big organization with lots of people, and I don't know what
11 all of them have in their files.

12 Q. Okay. Now, you've talked some in your testimony about the
13 cost of the accounting or projected cost of the accounting.

14 A. Yes.

15 Q. Do you remember that?

16 A. Sure.

17 Q. And at least one of the reasons that the cost is what it is,
18 is the time it takes to locate relevant documents to any
19 particular issue that you -- that the Department of Interior is
20 looking at. Correct?

21 A. Yeah, that's correct.

22 Q. So a large part of why it is costing what it is costing to
23 perform the accounting that the Department of Interior is
24 performing has to do with the time it takes to locate the
25 relevant records. Correct?

1 A. Yes.

2 Q. And it also then would have to do with the quality of those
3 records, and whether or not they're directly relevant to the
4 particular issue that they are -- that you're looking at them
5 for. Correct?

6 A. Well, I don't know that that's correct. Finding them and
7 the quality of the document itself are two different things.

8 Q. Let me help you with my question. It probably wasn't that
9 clear.

10 A. Okay.

11 Q. If you're going to look at whether or not a particular
12 payment came in and then made it to an IIM beneficiary's
13 account, if you can't find the actual control document that
14 shows and ties those two and links those two together, you may
15 have to go look for circumstantial evidence and other documents
16 to try to reconcile that transaction. Correct?

17 A. Yes.

18 Q. All right. So with respect to that, to the extent that the
19 source document that links two entries together is missing or is
20 not available, that creates additional cost for someone trying
21 to reconcile those transactions. Is that fair?

22 A. Yes.

23 Q. All right. Now, another part that is driving the cost is
24 the fact that early -- there have not been earlier accountings
25 for the IIM beneficiaries. Is that correct?

1 A. It's my understanding that we have not had a regular
2 periodic accounting process like we're required to do now, yes.

3 Q. Okay. So had those accountings been done previously, you
4 could then go use information from those accountings and build
5 on it. Correct?

6 A. I don't know. It depends on what the prior accountings
7 actually did.

8 Q. Okay. But a large part of what we're looking at when we
9 deal with cost for the accountings now has a lot to do with what
10 the Department of Interior has or hasn't done over the course of
11 the years with respect to both the keeping and organization of
12 documents, and the providing or not providing of previous
13 accountings. Is that correct?

14 A. I think it would be correct to say that the Department of
15 Interior did not anticipate 100 years later that it would have
16 to do this kind of an accounting. And, until we actually had
17 this lawsuit and the Court made its decision that we had to do
18 an accounting that spans such a great period of time, no one
19 anticipated that we would have to do this.

20 So we never organized our records to be able to do
21 this, and so it is very expensive to recreate them all.

22 Q. So that as the trustee, to the best of your knowledge -- and
23 I know what you were just testifying to is stuff that you've
24 been told, because you weren't in your position that you are now
25 until August of 2001. Correct?

1 A. Yeah, that's correct.

2 Q. And it is your understanding that the Department of Interior
3 never organized and maintained its records in a fashion that
4 would be helpful to providing an accounting to the
5 beneficiaries?

6 A. No, it's my understanding that in the past the records were
7 in place and organized in a way that an individual could come in
8 and ask for an accounting for themselves, but it had not been
9 organized robustly enough to basically do everybody at once.
10 And it's basically overwhelming the system to do all of that for
11 the huge span of time that we're doing.

12 Q. Okay. Now, yesterday I asked you a question and we looked
13 at a document that had to do with the -- I was trying to go at
14 the question of: You have found a lot of documents and you've
15 put them in Lenexa. The Department of Interior; I'm using "you"
16 as the Department of Interior here.

17 A. Sure.

18 Q. But how many documents are missing from that universe.

19 And we looked at a document, and we couldn't even tell
20 who had prepared that document. I looked through the
21 administrative record, and I found another copy of it last night
22 that helps shed some light on that, and I want to show that to
23 you. Let's look at -- from the administrative record, document
24 Bates 56-28, and let's look at the first page.

25 And Mr. Cason, let me tell you, I don't see your name

1 anywhere on this document. Okay?

2 A. Uh-huh.

3 Q. But I'm wanting us to look at it, to see if you are aware of
4 some of the things that are discussed here, okay, and whether
5 you took those into account in making your decision.

6 A. All right.

7 Q. Okay. Bring up first part of it so we can see. It's a
8 July 8, 2002 letter from NORC to Mr. Edwards. If you'll go back
9 to the full screen, you'll see it's Fritz Scheuren has signed
10 the letter. Okay?

11 A. Uh-huh.

12 Q. Let's look at the first paragraph. And he's indicating that
13 he's sending -- Mr. Scheuren is sending to Mr. Edwards two
14 analytical pieces that Joe Walker did with Crucita Grover, if
15 I'm saying the name correctly. Do you know those individuals,
16 or know who they are?

17 A. I've met Joe walker before, but I couldn't place him. I
18 don't know Crucita.

19 Q. Okay. But you know Joe walker as a Department of Interior
20 employee?

21 A. I've met him before.

22 Q. And you understand him to be a Department of Interior
23 employee or...

24 A. Actually, no picture at all. Just, I know I've met him but
25 I don't know what context he comes in.

1 Q. Okay. Fair enough. There's something else in the letter
2 that indicates kind of what he does. And it says that both of
3 these analytical pieces, one of which I showed you yesterday,
4 were prepared to support cost estimates included in the
5 June 30th historical accounting report. And remind you that
6 this is a July 8, 2002 document. The Department of Interior, do
7 you recall, provided a report to Congress on June 30, 2002, or
8 thereabout?

9 A. Okay.

10 Q. And they said they specifically estimated the number of
11 pages of ledgers, and that's Enclosure A; and the number of
12 other paper financial records they located, and that's
13 Enclosure B. Do you see that?

14 A. Yes.

15 Q. Now, look down to where it has Enclosure B, the indented
16 paragraph. And you see where he characterizes, essentially
17 summarizes what Enclosure B shows.

18 A. Okay.

19 Q. Now, let's go to page five of this document, so we're at
20 Bates 56-28-5, and pull up that last paragraph.

21 Oh, I didn't look at one thing we should have looked
22 at.

23 MR. DORRIS: Let's go back to the first page, and I
24 apologize.

25 BY MR. DORRIS:

1 Q. There's a paragraph, just the second one from the bottom.

2 It says, "Since."

3 "Since Crucita and Joe were among the foremost DOI
4 experts on Indian records," and it goes on to say, "I'm
5 confident" in certain things.

6 A. Okay.

7 Q. But do you know whether or not Joe Walker is -- I guess you
8 don't know whether he's one of the foremost DOI experts on
9 Indian records?

10 A. I don't.

11 Q. Let's look at paragraph five, the last paragraph. This is
12 the paragraph, at least when I showed it to you yesterday, we
13 did not know who had prepared the document. I will tell you
14 that this is the second page of Enclosure B to this document.
15 We did not know who had prepared it.

16 But do you see the 205 million sheets referenced in the
17 last line?

18 A. Yes.

19 Q. And my question to you was, even with the adjustments made
20 here, is this an indication that approximately a billion,
21 200 million -- excuse me, at least about a billion sheets of
22 financial records had been destroyed pursuant to record
23 retention schedules?

24 A. No.

25 Q. Okay. Now, have you, as part of your decision or anything

1 related to the plan, ever attempted to try to determine not just
2 what do we have, but what are we missing?

3 A. No.

4 Q. Now, Mr. Cason, in part of what became known as the decision
5 Cobell V, and you're generally familiar with how the cases have
6 been numbered here. Right?

7 A. There have been a bunch, yeah.

8 Q. Were you ever told that the Department of Interior entered
9 into and stipulated to five or seven stipulations of fact at
10 that time?

11 A. It's been awhile since I've seen them, but yes.

12 Q. Okay. Let me help you. I'll bring up the one page from
13 that decision --

14 A. Okay.

15 Q. -- which is 91 Federal Supplement 2d. The case starts on
16 page one. This is page 33.

17 And this is out of the reporter, and if you'll look
18 down toward -- in the left column there's a paragraph that
19 begins, "In addition." And it's saying, "Interior has made
20 significant concessions on some factual matters," and I'm not
21 reading the entire paragraph, "In a written stipulation filed on
22 the eve of trial, Interior admitted that as of the commencement
23 of trial," and I want to ask you about two of these
24 stipulations, to see if you understood both that the Department
25 of Interior had acknowledged these things; and two, whether or

1 not you would still agree with them today. Okay?

2 A. Okay.

3 MR. STEMPLEWICZ: Objection, Your Honor. These
4 stipulations speak for themselves as part of the record.

5 There's no point in asking this witness to go over things from
6 1999.

7 THE COURT: Sustained.

8 BY MR. DORRIS:

9 Q. Let me ask you this, Mr. Cason: Would you agree that the
10 Department of Interior's recordkeeping system is inadequate to
11 provide an accounting?

12 A. No.

13 Q. Would you agree that the Department of Interior does not
14 adequately control the receipts and disbursements of all IIM
15 account holders?

16 A. When you use the term "all," that suggests that there's no
17 possibility for error. And we've identified that we do have
18 errors. We have a lot of people that do this work.

19 I would say generally the system works very well.
20 Generally we get the money that we're entitled to and it goes to
21 the right place. But certainly, with all the people involved
22 and the tens of thousands of leases, we do have potential for
23 errors, and we do have errors.

24 Q. So are you saying that, given the size there are occasional
25 errors; but overall, you believe that the department adequately

1 controls the receipts and disbursements of IIM account holders?

2 A. I believe so, yes.

3 Q. Now, I've asked you about a \$13 billion throughput that
4 you've talked about before in some of your other testimony. Do
5 you recall my questions about that?

6 A. Yes.

7 Q. And that was a number -- who did you get that number from?
8 Because it's not one that you came up with. Right?

9 A. No.

10 Q. Where did you get that number?

11 A. Its's my understanding the number was generated by an
12 exercise of our historians, who looked back at historical
13 records and made an estimate of the throughput we've had in the
14 system from 1909 to 2000.

15 Q. And then, was that information taken by NORC and projections
16 made on it?

17 A. What sort of projections are you talking about?

18 Q. To come up with the \$13 billion number.

19 A. Well, I'm not sure who went through the exercise of actually
20 taking the information that was available from the historical
21 review, to arrive at a conclusion that the number is in the
22 ballpark of 13 billion.

23 Q. Have you ever reviewed the documents that show how the
24 13 billion was determined, or is that something that has just
25 been told to you?

1 A. I've seen tables that break down the 13 million (sic) on an
2 annual basis, to say we think that we had so much money in 1909,
3 1910, up through 2000, and that my understanding of it is based
4 on the data that we found historically. But it's recognized
5 it's not a permanent number until we actually do whatever
6 accounting we're going to do.

7 Q. Okay. Let me just ask you, you're not even going to account
8 for all 13 billion. Right?

9 A. We don't plan to, no.

10 Q. Do you even know what percentage of the 13 billion is going
11 to be covered by the 2007 accounting plan?

12 A. Not exactly, no.

13 Q. Do you know approximately how much?

14 A. I am told approximately we're anticipating somewhere around
15 50 to 55 percent.

16 Q. So for about half -- what you're saying is, you've been told
17 that the 2007 plan will account for about half of the nominal
18 dollars that have been received into IIM accounts. Is that
19 correct?

20 A. That's correct.

21 Q. All right. Let's just look at a document, to see if this is
22 the one with the tables that you have looked at, and from which
23 you've testified about the 13 billion. Okay?

24 A. Uh-huh.

25 Q. We'll look at document 52-6 in the AR, and we'll look at

1 page one first. It's a statistical estimate of the receipts
2 credited to the IIM Trust funds of July 30, 2002 by Mr. Scheuren
3 of NORC. Do you see that?

4 A. Yes.

5 Q. Now, let's look over to -- let's go to page six first. And
6 if you'll blow that table up so we're at Bates page six of this
7 document. And it shows the estimate of receipts from 1909 to
8 1971. This would be -- these are in millions of dollars.

9 Correct? In looking at this chart?

10 A. Yes.

11 Q. So it would show \$3,219,600,000. Correct?

12 A. Yes.

13 Q. And then it shows total receipts 1972 through 2001 of
14 \$9,905,700,000. Correct?

15 A. Yes.

16 Q. With the total that's indicated there of \$13,125,300,000.
17 Correct?

18 A. Yes.

19 Q. Let's look at -- have you seen -- is this one of the tables
20 you're talking about?

21 A. No, not this particular table. But it gets to the same
22 point.

23 Q. Let's look at the page before this, to page five in this
24 document.

25 MR. DORRIS: Bring up the top of that table, so we can

1 read it a little easier.

2 BY MR. DORRIS:

3 Q. And this is then a table that is showing the reported and
4 interpolated --

5 A. Yes.

6 Q. Do you know what interpolated is?

7 A. Yes.

8 Q. Ending balance for IIM Trust funds 1909 through 1971. And
9 then it goes year by year, and indicates the balance, and it
10 indicates the source of that number. Correct?

11 A. Yes.

12 Q. And you see number ones there and you see number twos for
13 some of the years?

14 A. Yes.

15 Q. Let's look at the bottom of the chart. And do you see the
16 total is that total of 3,219,000,000, and this shows \$593,000,
17 approximately, do you see that?

18 A. Yes.

19 Q. And that's then the total that's used on the next sheet that
20 we've already looked at. Correct?

21 A. Yes.

22 Q. Is this one of the tables that you've looked at?

23 A. I don't know about this particular one. Something similar
24 to it.

25 Q. And you see it shows in the source documents, note one, it

1 comes from Morgan Angel and Associates as the source of
2 information. Those are historians that have been hired by the
3 Department of Interior. Correct?

4 A. Yes.

5 Q. And number two are amounts that have been estimated based on
6 the historians' data. Do you see that?

7 MR. STEMPLEWICZ: Your Honor, I object to this as
8 beyond the scope of direct. Plaintiffs have indicated numerous
9 witnesses they intend to call on issues like this. Mr. Cason
10 can be asked questions about this. I'm assuming they're not
11 going to bring him back as their own witness, in which case it's
12 less objectionable to go into this area, I suppose.

13 But it's clearly not the witness who has put together
14 these charts, and I believe the people who are, are on the
15 plaintiffs' witness list, in any event.

16 MR. DORRIS: Your Honor, I wanted --

17 THE COURT: Do we have to do this two or three times?

18 MR. DORRIS: I hope we don't have to do it two or
19 three --

20 THE COURT: I mean, you don't have to put your whole
21 case in through this man. He did give direct testimony, and you
22 are confined to his direct. Would you recall him for this
23 stuff?

24 MR. DORRIS: I want to avoid that.

25 THE COURT: I'm going to sustain the objection. Beyond

1 the scope.

2 MR. DORRIS: Okay.

3 THE COURT: In the interest of keeping us moving.

4 BY MR. DORRIS:

5 Q. We're going to bring up administrative record
6 document 63-11. That's some of Mr. Zippin's notes of meetings
7 that he had with you. I want to ask you about a couple of
8 things on them. Okay?

9 This is going to be -- let's go to 63-11, page 10. And
10 if you bring up the top so we can see it, these are Mr. Zippin's
11 notes of a meeting with you June 17, 2004. Do you see that?

12 A. Yeah.

13 Q. June 17, 2004. Are you with me?

14 A. Yes.

15 Q. And note, it says, "Secretary meeting, July 10, with
16 options." I take it there was an upcoming meeting with the
17 secretary?

18 A. Okay. That may be true.

19 Q. Okay. Look down about halfway first page, it has something
20 that has "Fiscal year 2005 options." Do you see where it says,
21 "Fiscal year 2005 options. One is Jim's approach, LSA, or do
22 the January 6 plan."

23 Do you know -- do you recall -- we know the January 6th
24 plan is the 2003 plan. Correct?

25 A. Yes.

1 Q. And the LSA, we've seen that that was even moving forward at
2 this time. But it refers to Jim's approach also. Did you have
3 a separate approach that was considered?

4 A. I don't know. And just to be clear, we talk about a lot of
5 issues in trying to move this project forward, and I'm not sure
6 what his reference here is to what Jim's approach is. So I
7 don't know how to answer it.

8 Q. Okay. That's fine. Let's look at the next page here,
9 page 11. Up at the top it indicates that it is -- these are a
10 continuation of his notes from that June 17th meeting. And
11 then, if you'll look at what's brought up here, where it says,
12 "Example statements three to four." It says, "Sample" -- the
13 first bullet -- "Sample of a statement from paper record with
14 opening balance we cannot verify." Do you see that?

15 A. Yes.

16 Q. Was there ever a sample of a historical statement of account
17 prepared, to the best of your knowledge, that would indicate
18 what a beneficiary was going to be told when their account went
19 back into the paper record and the opening balance could not be
20 verified?

21 THE COURT: Mr. Dorris, would you rephrase that
22 question? I didn't follow the question.

23 MR. DORRIS: Yes, sir. Let me start it a different
24 way, Your Honor.

25 BY MR. DORRIS:

1 Q. Do you recall what was being discussed here?

2 A. No, I don't.

3 Q. Is one of the issues with going back into the paper records
4 era, is it expected that there will be accounts for which the
5 Department of Interior cannot verify the opening balance?

6 A. I don't know. We haven't done it yet, so we don't know what
7 we're going to find.

8 Q. Okay. So to the extent this was talking about opening
9 balance in the paper record era, you don't recall this
10 discussion?

11 A. I don't know what he's referring to here.

12 Q. Now, Mr. Cason, do you know or have you been told
13 approximately how many former and current IIM beneficiaries
14 there are or have been over the course of time?

15 A. I've heard speculation about it.

16 Q. But you don't -- there have been no estimates or
17 approximations that have been made, that you've been told?

18 A. I've heard the plaintiffs have advanced 500,000. And our
19 staff has taken stabs at assumptions that drive numbers that are
20 on both sides of the 500,000.

21 Q. But from your minds, those numbers are speculation because
22 you have not seen detail, any backup for them. Is that correct?

23 A. Well, in my opinion, they're driven by assumptions as
24 opposed to facts, and that there has been no need for the last
25 100 years to keep a running total of all the accounts that have

1 ever been. And now it's an issue where people would like to
2 know, and we haven't had a system to do that.

3 Q. And have you seen any estimates or approximations from
4 anyone from the Department of Interior, or consultants hired by
5 the Department of Interior, as to how many accounts there have
6 been over the course of the IIM Trust?

7 A. Well, that's just what we talked about.

8 Q. Well, I had asked about beneficiaries, and now I've switched
9 and talked about accounts.

10 A. Oh, accounts? Well, I was responding to accounts.

11 Q. Okay. Let's make sure we're communicating. Some
12 beneficiaries have more than one account?

13 A. Yes.

14 Q. All right. So there may be more accounts than there are
15 beneficiaries. Right?

16 A. Yes.

17 Q. And would it be fair to say you're not -- you don't have
18 reasonable estimates that have been provided to you that show
19 the total number of either beneficiaries or accounts over the
20 history of the IIM Trust? Is that right?

21 A. I have seen estimates. I don't know how good the estimates
22 are, because I believe they're based on assumption. And at this
23 point, the estimate number is not germane to the work that we
24 have to do, which is take IIM accounts and reconcile them,
25 produce an HSA statement.

1 Q. Okay. Well, here's where I was going, and it may be that
2 you can't help me with this question. Where I was going was:
3 Of the total number of beneficiaries or the total number of
4 accounts, do you know approximately the percentage of either the
5 beneficiaries or the accounts that will be covered by the 2007
6 plan?

7 A. I cannot know that. If I don't know how many accounts there
8 have been exactly, and I don't know exactly how many I'm going
9 to do, there's no way to really tell you definitively.

10 Q. Okay.

11 MR. DORRIS: I have no further questions, Your Honor.

12 THE COURT: Any redirect, Mr. Stemplewicz?

13 MR. STEMPLEWICZ: Yes, some, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. STEMPLEWICZ:

16 Q. Yesterday you were asked about language in a so-called
17 midnight rider, and whether you had drafted that. Do you recall
18 that testimony?

19 A. Yes.

20 Q. Do you recall a quote about "spending 13 billion, or
21 spending in the neighborhood of \$13 billion would be just nuts"?

22 A. Yes.

23 Q. Do you recall that quote, and where it came from?

24 A. Yeah, it was a Congressional quote.

25 Q. You didn't write that, did you?

1 A. Huh?

2 Q. You didn't write that?

3 A. No.

4 Q. Who is Senator Dorgan?

5 A. Currently, Senator Dorgan is the chairman of the Senate
6 Indian Affairs Committee.

7 Q. And does the Indian Affairs Committee play any role in this
8 administration of the IIM system?

9 A. Yes, they do.

10 Q. What would that be?

11 A. They're the authorizing committee that provides statutory
12 direction to the Department of Interior on how we administer the
13 Indian Trust. And that's an over-time issue.

14 Q. Now, this statement, "If there's one thing with which
15 everybody involved in this issue seems to agree, it is that we
16 should not spend that kind of money on an incredibly cumbersome
17 accounting that will do almost nothing to benefit the Indian
18 people." Have you heard that quote before?

19 A. Yes.

20 Q. Who is Senator Burns?

21 A. Senator Burns was a senator from Montana.

22 Q. Have you ever discussed either of those concepts with either
23 Senator Dorgan or Senator Burns?

24 A. I've had a number of conversations with both, both senators.

25 MR. DORRIS: Your Honor, I'm going to object. I don't

1 think this is relevant to any of the issues.

2 THE COURT: Well, you opened this yesterday, but
3 frankly I didn't think it was relevant yesterday, either. So
4 I'm going to sustain the objection.

5 Move on. I don't care who said what to Congress, or
6 what Congress said to you.

7 BY MR. STEMPLEWICZ:

8 Q. In regard to direct payments, and that issue, you were asked
9 a number of questions. Do recipients of direct payments have
10 IIM accounts?

11 A. Some may. I don't know the answer specifically, because you
12 may have a lease with a direct payment in one case, and a
13 separate lease in which you have an interest in which the
14 proceeds go to an IIM account.

15 So I don't know the answer for all Indians.

16 Q. But the IIM accounts in such cases would not be in reference
17 to the direct payments?

18 A. No, that would be correct.

19 Q. So if -- the class consists of all IIM account holders --

20 A. Yes.

21 Q. -- current and former. Is that your understanding?

22 A. I've heard the reference to current and former. As far as I
23 understand, current and former has not been clearly defined.

24 Q. But it would certainly not include direct payees?

25 A. That's our understanding.

1 Q. You were beginning to make an answer in regard to some work
2 being done in regard to the paper era records when Mr. Dorris
3 interrupted you. Do you recall the judge saying you could be
4 asked to provide your answer on redirect?

5 A. Yes.

6 Q. Do you want to go ahead and provide that answer now?

7 A. The concept is, we don't know what we're going to find yet
8 on the paper era. And at this point, what we're doing is
9 designing an approach to the paper era, to look at it similar to
10 how we're looking at the electronic era, to identify the degree
11 of records that we have, what the reconciliation would tell us
12 about the accuracy of the transaction that occurred in the paper
13 era. And based upon what our findings are, we may or may not
14 need to adjust how we approach the task.

15 So if we find similar levels of very low error rate,
16 then it looks like the design of our work would be appropriate;
17 and if we find instances of fraud or systemic accounting error
18 or some other problem, we may have to redesign it to address
19 that.

20 Q. You were asked some questions regarding previous accountings
21 and whether, if they had been done, would the costs for doing
22 the accounting today be less. Do you recall that?

23 A. Not specifically. I'm sorry.

24 Q. Well, in regard to previous accountings, are you able to
25 provide a -- or do you know whether there exists any sort of

1 collection of incidents where allottees have sued the United
2 States for damages of one kind or another?

3 A. Yes.

4 THE COURT: I don't think you need to go there,
5 Mr. Stemplewicz. The questions that were put to this witness
6 were, it seemed to me, almost self-evident, you know: If it had
7 been done before, it would have cost less now. I think I can
8 almost take judicial notice of that proposition. We don't need
9 to continue that.

10 MR. STEMPLEWICZ: Your Honor, I just didn't want to
11 leave hanging the suggestion that no accounting has ever been
12 done for any beneficiary in the past. It's an allegation that's
13 been made, and there's an opportunity to have this witness
14 address some of it.

15 THE COURT: Yeah. I'm just not sure how material it
16 is, counsel. Let's move on to something else. I mean, I'm not
17 sure how material the charge is that no accounting has ever been
18 done.

19 BY MR. STEMPLEWICZ:

20 Q. You were asked some questions yesterday about, in the LSA
21 project, the effect of unreconciled transactions. Do you recall
22 that?

23 A. Yes.

24 Q. All right. Were you aware, or are you aware specifically
25 whether NORC, in doing the LSA work, made any assumptions

1 regarding unreconciled transactions being errors?

2 A. It's my understanding that we do not treat unreconciled
3 transactions as errors if we don't find the supporting
4 documentation. The thought process is, when I began the
5 project, all documents were not available, and that now that we
6 go through the reconciled transactions and we find 86 percent,
7 99 percent, depending on the effort we've made.

8 At the beginning, none of them were available and all
9 of them had an equal shot at being consistent with or
10 inconsistent with the record. And that, after we go and find
11 99 percent of the documents on the LSA project, it seems that it
12 would be unreasonable to assume that the remaining one percent
13 would indicate an error.

14 Q. It would be unreasonable why? Because it's too
15 conservative?

16 A. No. I think the position that we've taken is, we neither
17 assumed that it confirms, nor refutes, the transaction that
18 we're looking at.

19 So the assumption that we've made is just to treat a
20 missing document as that: It's missing; as opposed to, it
21 indicates that either the transaction was confirmed or refuted.

22 MR. STEMPLEWICZ: No further questions, Your Honor.

23 THE COURT: All right. I think that completes your
24 testimony, Mr. Cason. You may step down. Thank you.

25 THE WITNESS: Thank you.

1 MR. KIRSCHMAN: Your Honor, before we call the next
2 witness, the parties have a couple of administrative matters
3 they would like to broach with you. If now is appropriate, we
4 could. Or we could call the next witness and deal with it maybe
5 after lunch. Whatever your preference.

6 THE COURT: I'm all for calling the next witness.
7 Never do today what we can put off until after lunch.

8 MR. KIRSCHMAN: Actually, my administrative matter, I
9 have to deal with before the next --

10 THE COURT: All right. Deal with your administrative
11 matter.

12 MR. KIRSCHMAN: Thank you, Your Honor. Our next two
13 witnesses may address information that could be covered by the
14 Privacy Act, very likely is, as they address their work with
15 specific documents and account information. We certainly want
16 to keep the courtroom open. We've heard the Court's view on
17 this before.

18 One thing defendants do suggest is that when it comes
19 to the use of the big screen, to the extent that a document will
20 have specific account totals or names on it, or account numbers,
21 that we turn that screen so that that information won't be
22 readily available.

23 Our witnesses and our counsel are prepared to address
24 the documents and the information in a general way, to try to
25 avoid any concerns on the transcript, on the written record.

1 THE COURT: What kind of data are we talking about?
2 What is protected here? I mean, I can by order, I think,
3 override the Privacy Act for purposes -- I hate to keep people
4 in the courtroom in the dark. I don't think we have any voyeurs
5 out there. What's the issue?

6 MR. KIRSCHMAN: Well, Your Honor, you're right that you
7 do have that authority, and that's one reason I'm bringing it to
8 your attention. But the account information will include an
9 individual's name, a beneficiary's name, and account totals,
10 balances, end dates. It will demonstrate, for example, check
11 numbers, disbursement dates, disbursement amounts, income
12 received on a monthly basis. And Ms. Herman's documents that
13 she uses as part of, for example the reconciliation process,
14 goes into this information.

15 So it will include very specific information about
16 particular beneficiaries' accounts, and the amounts of money
17 held for those beneficiaries.

18 This is a class action, plaintiffs obviously can
19 express their view, but that's our concern.

20 THE COURT: Mr. Gingold, Mr. Harper, what do you say?
21 These are your clients. Is this a big deal?

22 MR. HARPER: No, Your Honor. I think we're okay with
23 the -- it being public.

24 THE COURT: All right. Then I think the public nature
25 of the trial overrides individual privacy issues here. We're

1 talking about line items for individuals. I don't think that's
2 a significant invasion of anybody's privacy, so we'll go ahead
3 and show it to everybody.

4 MR. KIRSCHMAN: Thank you for that, Your Honor.

5 THE COURT: Anything else?

6 MR. HARPER: We have one more item, Your Honor, if I
7 could raise it. It shouldn't take long.

8 I'm going to hand up if I could a letter and an
9 exhibit. This letter that I'm handing up, Your Honor, is dated
10 October 8th. It's from me to Mr. Kirschman. And the exhibit is
11 one of the documents in question. The government has produced
12 numerous exhibits in their list. As required by the Court
13 order, both parties produced exhibits that they may use at
14 trial.

15 As you can see from this exhibit that I have attached
16 and numerous like it, they have fairly poor quality photocopies
17 that really have nondescript charts on them, coming from a
18 lengthy report. In this case, for example, you can see the
19 first page of the chart starts on page 98. It's impossible for
20 the plaintiffs to review the materials, see it in context.

21 And I say there's numerous exhibits. We've raised this
22 with the defendants. They basically have said that they're not
23 intending to produce them any time soon, and so we wanted to
24 raise this with the Court so it doesn't cause any delays when we
25 get to that point when these documents are utilized.

1 As you can see on page one -- excuse me.

2 Page DX-026-002, which is page 98 of the document, it even has a
3 reference to footnote one on one of the principal charts on that
4 page. And you can't even tell what footnote one is, let alone
5 this entirety of this document. It's impossible for us to
6 determine basic, basic things, like whether or not this is
7 authenticatable.

8 THE COURT: Okay. You've made your record on this,
9 Mr. Harper. The government needs to turn over the most legible
10 stuff they can. If they can't do it and if it's late and if the
11 plaintiffs are prejudiced, we may have to delay this thing so
12 that we can clear up the prejudice or give them a chance to
13 respond. But I don't think we need to take any more time about
14 that this morning.

15 Call your next witness, please, Mr. Kirschman.

16 MR. HARPER: Thank you, Your Honor.

17 MR. KRESSE: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. KRESSE: John Kresse, Your Honor, for the
20 defendants. Next witness is Katherine Ramirez.

21 THE COURT: All right.

22 (Oath administered by Courtroom Deputy.)

23 (KATHERINE RAMIREZ, DEFENDANT witness, having been duly sworn,
24 testified as follows:)

25 DIRECT EXAMINATION

1 BY MR. KRESSE:

2 Q. Good morning, Ms. Ramirez.

3 A. Good morning.

4 Q. Would you spell your name for the Court?

5 A. Katherine, K-A-T-H-E-R-I-N-E. Last name Ramirez,

6 R-A-M-I-R-E-Z.

7 Q. What is your current position with the Department of
8 Interior?

9 A. Currently I'm the on-site manager for the Office of
10 Historical Trust Accounting in Lenexa, Kansas.

11 Q. And at what facility do you work?

12 A. I work at the American Indian Records Repository.

13 Q. And is it okay to refer to it as the AIRR, A-I-R-R?

14 A. Yes.

15 Q. Ms. Ramirez, first we'll talk a lit bit about your
16 background. Where were you born? Or where did you grow up,
17 excuse me?

18 A. I grew up in Albuquerque, New Mexico.

19 THE COURT: We can do that briefly.

20 MR. KRESSE: You attended school at Albuquerque --

21 THE COURT: We can get on to the guts of this, I think.

22 BY MR. KRESSE:

23 Q. And Ms. Ramirez, you got a bachelor's degree in accountancy?

24 A. Bachelor's of accountancy, yes.

25 Q. And what year was that?

1 A. In 1984.

2 Q. Following that, you went to work for a couple of accounting
3 firms. Is that correct?

4 A. Yes.

5 Q. And what were the companies that you worked for?

6 A. I started with Arthur Andersen, and then I went to
7 Llewellyn & Company.

8 Q. And that would have been 1984 through 1986?

9 A. Correct.

10 Q. Then you went to work for the Bureau of Indian Affairs?

11 A. Yes.

12 Q. Starting out. And your first position was an accountant?

13 A. Yes.

14 Q. What basically did you do in that position?

15 THE COURT: No, I don't want to know what she did in
16 that position.

17 MR. KRESSE: I'm just trying to establish a foundation
18 for Ms. Ramirez's testimony.

19 THE COURT: Is she an expert?

20 MR. KRESSE: She's a fact expert, in terms of the
21 work --

22 THE COURT: I want to know what job she does now, and
23 then let's get on to what her testimony is.

24 MR. KRESSE: Thank you, Your Honor.

25 THE COURT: And this is a rule for all of you, and all

1 of your witnesses. I thought I made this clear in the pretrial
2 conference. I mean, we're saving five, 10 minutes per witness,
3 it adds up. Let's go on.

4 BY MR. KRESSE:

5 Q. All right. Ms. Ramirez --

6 MR. KRESSE: And Your Honor, we're going to be talking
7 about some of the work that she's performed while she's worked
8 at BIA, which is relevant to the issues that we're trying here.
9 That's why I would like to ask her a few questions about the
10 work that she's done in the past, as opposed to the present.

11 THE COURT: All right. You understand the ground
12 rules. Let's keep it relevant.

13 MR. KRESSE: I'll try, Your Honor.

14 BY MR. KRESSE:

15 Q. Ms. Ramirez, one of your positions was working for the
16 branch of IIM. Correct?

17 A. Correct.

18 Q. Between roughly 1988 and 1994?

19 A. Correct.

20 Q. And at one point you were the branch chief. Correct?

21 A. That's correct.

22 Q. And while you were there, you prepared several procedures
23 concerning check processing. Correct?

24 A. That's correct.

25 MR. KRESSE: Could we show Defendant's Exhibit 218,

1 please?

2 MR. KIRSCHMAN: One second, Your Honor, please.

3 THE COURT: All right. We got it. We had it. It's
4 lost. It's back. All right. Go ahead.

5 MR. KRESSE: Your Honor, this is not the full screen
6 view. This is a three-page -- or excuse me, five-page exhibit,
7 Your Honor. Defendant's Exhibit 218.

8 BY MR. KRESSE:

9 Q. Ms. Ramirez, are you familiar with this document?

10 A. Yes, I am.

11 Q. Did you prepare this document while you were working at the
12 branch of IIM?

13 A. Yes, I did.

14 Q. What is the purpose of this document?

15 A. It was to delineate the steps that you follow in processing
16 these magnetic tapes that provide information to Treasury
17 regarding the checks that were issued by the Bureau of Indian
18 Affairs to individual Indian account holders.

19 Q. And the reference on the first page, item number one?

20 THE WITNESS: Can I get my glasses?

21 THE COURT: Yeah, I think you need them.

22 BY MR. KRESSE:

23 Q. All right. The reference there, the first numbered
24 paragraph states, "The magnetic tapes were ISSDA 4844.

25 A. Yes.

1 Q. ISS DA means?

2 A. Indian Services Special Disbursing Agent.

3 Q. And the 4844, what does that represent?

4 A. That is a disbursing symbol that was assigned to us by the
5 Department of Treasury.

6 Q. And when you say, "assigned to us," for what purpose?

7 A. It was for issuing Treasury checks.

8 Q. And Treasury checks for what individuals or what
9 organizations?

10 A. For the individual Indians.

11 Q. Now, were they used -- was 4844 used for any other purpose,
12 other than individual Indians?

13 A. Not that I know of, no.

14 Q. Was it used for tribal IIM?

15 A. Only if the tribal money came out of the IIM account, out of
16 an IIM account.

17 Q. Ms. Ramirez -- and the use of this procedure was what? In
18 other words, you prepared this document. What was the purpose
19 of it?

20 A. I recall that we had to provide some training to Arthur
21 Andersen, the accounting firm, in preparation for an audit that
22 they were going to perform for the Bureau of Indian Affairs.
23 And we had to train individual accountants of this firm on all
24 the different processes and procedures that were done at central
25 office, which is where I worked.

1 Q. And that was in Albuquerque?

2 A. Correct.

3 Q. Now, turning your attention to the third page of the
4 exhibit. And if you look in the upper right corner, it says,
5 "Date, 9/30/89," or "September 30, '89." Correct?

6 A. Yes.

7 Q. Do you know when you prepared this procedure, this document?

8 A. Shortly after that time, is what I'm guessing. Maybe
9 October, November of '89.

10 Q. And the far right-hand corner of this exhibit, it says,
11 "State's attachment A," in handwriting. Is that your
12 handwriting?

13 A. That is mine, yes.

14 Q. Then also on that page, it's a printout and it has lines of
15 numbers and amounts. Correct?

16 A. That's correct.

17 Q. And then there's a total in handwriting?

18 A. Uh-huh.

19 Q. Do you see that?

20 A. Yes, I do.

21 Q. And what's the total?

22 A. \$1,637,466.75.

23 Q. And then next to that, to the left there's another number in
24 handwriting?

25 A. 2,162.

1 Q. Is that your handwriting?

2 A. Yes.

3 THE COURT: I bet in those days you had to add those up
4 by hand?

5 THE WITNESS: No, we used a calculator. We had
6 electricity.

7 THE COURT: 1989? Okay, I believe you.

8 THE WITNESS: I'm sorry.

9 BY MR. KRESSE:

10 Q. Ms. Ramirez -- and that total, does that represent a total
11 for a particular time period? I know it says September '89 in
12 the right-hand column for each of those lines.

13 A. Yes.

14 Q. Do you know what time period it is, those amounts that are
15 stated there?

16 A. They're somewhere in September of 1989.

17 Q. Turn to the next page of the document, which is the fourth
18 page.

19 A. Uh-huh.

20 Q. And that is a form. Correct?

21 A. Correct.

22 Q. Magnetic tape control record?

23 A. Yes.

24 Q. And this form has a "TFS form 3510" on the bottom left?

25 A. Yes.

1 Q. Are you familiar with that form?

2 A. Yes, I am.

3 Q. And what's the 3510 form do?

4 A. It provides information to Treasury that accompanies a
5 magnetic tape that you send them, so they can load this
6 information onto their database with individual check
7 information, check numbers, dollar amounts, check dates, et
8 cetera.

9 Q. And how often did the BIA, your office, send the tapes over
10 to Treasury?

11 A. We would send them at the end of every week, and at the end
12 of the month.

13 Q. Now, when you say the end of the month, it covered what, the
14 last several days of the month? You're not talking about the
15 whole month?

16 A. Well, any tape could cover anything earlier than that date.
17 So if for some reason you had some checks at the beginning of
18 the month that you had not reported to Treasury, and you're
19 sending your last tape at the end of the month, and at this
20 point now that data is ready, you would send all that
21 information on that tape at the end of the month.

22 Q. And drawing your attention to the left-hand side, just above
23 the middle of the form, "Issue date of checks." Do you see
24 that?

25 A. Yes.

1 Q. And I was asking you before about the previous page, the
2 time period. Does this more specifically state the time period
3 of those checks?

4 A. Yes. It shows that these checks were issued between 9/25 of
5 '89 and 9/30 of '89.

6 Q. It's basically one week. Correct?

7 A. Correct.

8 Q. Now, next to that, the box immediately to the right of those
9 dates is the date November 2nd, 1989. Correct?

10 A. Correct.

11 Q. And it says "Date tape created."

12 A. That's correct.

13 Q. So there's a lag between the check reporting information and
14 your ability to actually send the tape over to Treasury.

15 Correct?

16 A. That's correct.

17 Q. And why is that?

18 A. Because at the time when I joined the branch of IIM, there
19 were manual checks that some of the agencies and regional
20 offices had in their possession; meaning, you stick it in the
21 typewriter and type it, as opposed to feeding it through a
22 printer with form-fed type checks.

23 So those agencies and regional offices that had these
24 manual checks, after they prepared these checks, then they would
25 have to collect all their paperwork and send it in to a central

1 office like Albuquerque, New Mexico, to be reported to Treasury.

2 So you're collecting documentation for a number of
3 field agency offices and regional offices. In addition, you've
4 got an automated check process that's occurring at certain tech
5 centers across the United States. And that information is also
6 being forwarded to Albuquerque.

7 So all of this automated and manual information is
8 being fed to one point, and it gets fed into a different system
9 now, an ISSDA check reporting system, and then the mag tape can
10 get created and these forms get filled out. So you've got a lag
11 time that occurs.

12 Q. Then the -- below the box that has the dates, there's a box
13 that states, "Serial numbers." Correct?

14 A. That's correct.

15 Q. And then underneath that it shows -- it says, "First check
16 on tape," and there's a number under that. Correct?

17 A. Yes.

18 Q. And that's what, the check number?

19 A. That is the first check number on this mag tape.

20 Q. And then the box of the right of that is what?

21 A. Is the last check number on this tape.

22 Q. Now, down at the bottom, there's a fairly large box, and it
23 has handwriting, under the term "FMS control number"?

24 A. Yes.

25 Q. FMS refers to what?

1 A. Financial Management Service.

2 Q. And that's part of Treasury?

3 A. That's part of Treasury.

4 Q. There's dates there, and several notes. Correct?

5 A. That's correct.

6 Q. And whose handwriting is that?

7 A. That's mine.

8 Q. And that keeps track of what?

9 A. That shows that we mailed this magnetic tape and these forms
10 to Treasury on November 3rd. And then on November 6th we heard
11 back from Treasury that all the ranges were accepted, there was
12 a transaction status report that was obtained from Treasury;
13 they gave it back to us. And then the tape was received back in
14 our office on November 20th, that's the last line there, and
15 it's noted on the tape that it was accepted.

16 Q. Above that box and to the right-hand side there's a
17 disbursing officer's signature box. Correct?

18 A. Yes.

19 Q. The disbursing officer in this case was who?

20 A. Jim Paris.

21 Q. Who was Jim Paris?

22 A. He was --

23 Q. Aside from the disbursing officer?

24 A. Right. He was -- I think he was the division chief. When I
25 joined IIM in '88, it was a section within a branch. So

1 initially he was the branch chief, and then I thought later he
2 became like the division chief. Then he eventually became the
3 director of the office.

4 Q. And is that his signature, to your knowledge?

5 A. Yes, that's his signature.

6 Q. Then to the left, those initials, are those yours?

7 A. Those are mine.

8 THE COURT: Mr. Kresse, orient me here, will you,
9 please? This is a bench trial.

10 MR. KRESSE: Sorry, Your Honor.

11 THE COURT: What's this all about?

12 MR. KRESSE: Well, Your Honor, this is showing that the
13 Department of Interior, Bureau of Indian Affairs, was providing
14 check information to the Treasury Department, keeping track of
15 their disbursements, and that -- later there will be other
16 testimony, not only from Ms. Ramirez but also from another
17 witness, about the use of this data for keeping track of whether
18 checks were actually cashed. And there is an allegation in this
19 case that either individuals never received their checks or they
20 never cashed their checks to some large amount. And those are
21 allegations that have been made since Your Honor has been on
22 this case.

23 So this is an effort to show --

24 THE COURT: You're basically showing me how -- you're
25 basically showing me a kind of, I wouldn't call it an arctic

1 trail, but you're showing me how the process worked?

2 MR. KRESSE: Correct, Your Honor. That there was a
3 regular process.

4 THE COURT: Early in the electronic era?

5 MR. KRESSE: Correct.

6 THE COURT: Okay.

7 MR. KRESSE: Since you've asked the question about the
8 electronic era...

9 BY MR. KRESSE:

10 Q. Ms. Ramirez, this is -- document generated, or these forms
11 are generated in late 1989. Right?

12 A. Yes.

13 Q. To your knowledge, when did Interior start to automate and
14 use computer systems for tracking the financial transactions for
15 the IIM?

16 A. If you're referring to the subsidiary system, they call it
17 the IRMS, integrated records management system. That came up in
18 the '70s at certain locations, and it continued to be utilized
19 or come up in the '80s as it went across the 12 different
20 regions for the Bureau of Indian Affairs.

21 Q. So in sum, Ms. Ramirez, is it fair to say this the document
22 that's attached, the two documents that are attached at pages
23 three and four of Defendant's Exhibit 218, show that a little
24 over \$1.6 million in checks were disbursed under disbursing
25 symbol 4844 during a one-week period?

1 A. Can you raise the image up higher? Yes.

2 Q. And you're now looking again at the fourth page?

3 A. Upper right-hand corner, "Total issue amount."

4 Q. And this, there's no commas or decimal points. Correct?

5 A. Right, there's none.

6 Q. And that's intentional?

7 A. Pardon?

8 Q. That's intentional?

9 A. Yes.

10 Q. So where the 75 is, that's 75 cents?

11 A. That's correct.

12 Q. And that's consistent -- is that consistent with the dollar
13 amount on page three of the document that was handwritten?

14 A. It should be. Let me see page three.

15 MR. KRESSE: Can you go back to page three? In the
16 middle of the page.

17 A. Yes, that's the number.

18 BY MR. KRESSE:

19 Q. Ms. Ramirez, I would like you to turn your attention to
20 Defendant's Exhibit 219. This is a five-page document.

21 Are you familiar with this document?

22 A. Yes.

23 Q. Did you prepare this document?

24 A. Yes, I did.

25 Q. Approximately when did you do this?

1 A. It would have been about the same time that I had prepared
2 that earlier document we just looked at.

3 Q. And you mentioned before that you recalled the purpose was
4 for orienting Arthur Andersen?

5 A. Yes, it was for training some Arthur Andersen accountants.

6 Q. Was that the reason that you generated this document, as
7 well?

8 A. Yes.

9 Q. The SF -- it states at the top of the document on the first
10 page, "SF 1098 process for Albuquerque and Navajo areas." Do
11 you see that?

12 A. Yes.

13 Q. Could you explain what that means, SF 1098 process?

14 A. That's a standard form that is used in the federal
15 government to return money to a specific agency. So when the
16 Albuquerque -- when checks for the Albuquerque and Navajo
17 individual Indian accounts were issued, there was not a tech
18 center where their checks were printed, like the other regions
19 across the United States. Instead of doing that, their check
20 information was sent to a Treasury regional disbursing office.
21 We used to call them RDOs. So San Francisco was the RDO that we
22 utilized to issue the Albuquerque and Navaho checks.

23 When San Francisco would cut checks on our behalf to
24 these individual Indians and mail them out, if for some reason a
25 check came back to San Francisco undeliverable, then San

1 Francisco would void or cancel the check, and they would use an
2 SF 1098 to return the funds to the Bureau of Indian Affairs.

3 Q. Do you know when that process that you just described
4 started being used? In other words, used in the regional
5 disbursing office?

6 A. Yes, I started with IIM in 1988. And it was either, we had
7 just started using it when I got there in '88, or we started
8 using it in '89. I don't recall.

9 Q. Now, you've used the terms "region" and "area."

10 A. Uh-huh.

11 Q. You mentioned before, I believe, that there were 12 regions,
12 or there are 12 regions --

13 A. That's correct.

14 Q. -- for BIA. Correct?

15 A. Yes.

16 Q. And at the time you're describing this process in 1989, were
17 they called areas?

18 A. I beg your pardon?

19 Q. Were they called areas then?

20 A. Yes. Region or area is an interchangeable term, as far as
21 I'm concerned.

22 Q. And the regions, they have different names now than the
23 areas did? For instance, Albuquerque?

24 A. Right. Instead of Albuquerque, it's called Southwest
25 Regional Office.

1 Q. So that's true in many of the regions which were areas?

2 There's different names now?

3 A. Yes.

4 Q. When you received the 1098 -- let's proceed to the second
5 page of this document 219 -- or Defendant's Exhibit 219. This
6 is a printout. Correct?

7 A. Yes.

8 Q. And is this the -- what is this printout? Where does this
9 come from?

10 A. It came from the Department of the Treasury, and it came
11 from the San Francisco office. In the upper left corner, you
12 see "Department of the Treasury, 1TF," something or other.
13 That's the form number.

14 Q. And this document came to your office?

15 A. It came to the Albuquerque office, yes.

16 Q. Were you involved in processing these forms?

17 A. Yes.

18 Q. Looking down to the middle of the document, there's
19 handwriting there.

20 A. Yes.

21 Q. Whose handwriting is that?

22 A. That is mine.

23 Q. What's the purpose of your notation on this form?

24 A. Because when you look at this form, it shows that one check
25 for \$1.43 is being returned or was canceled by Treasury. So it

1 doesn't say what account holder it is, or if it's an Albuquerque
2 region check or a Navajo region check.

3 So what we do is, we take this form, go back to other
4 documentation that we have where we actually submitted
5 information to Treasury and said, "Please cut these checks," and
6 we look up what check this is. I think there's a second page to
7 this form that actually gives you like a check number.

8 Q. Is that -- do you recall if that's attached to this exhibit?

9 A. Yes.

10 Q. Let's go forward --

11 A. What did page three of the exhibit look like?

12 Q. I think page three is another example of the 1098. Is that
13 safe to say?

14 A. Yes, that's another 1098, yes.

15 Q. Let's go to the next page, page four.

16 A. Nope. What about page five?

17 Q. There's one more page.

18 A. Nope, that's not it. I recall that it came with another
19 page that actually specified check information. So in the one
20 scenario we were looking at, that was one check for \$1.43. But
21 if there ever was a form that said three checks or four checks,
22 and then it quoted some dollar amount, the second page of this
23 form would list the individual check numbers.

24 And I thought it also listed a schedule number, like
25 VS-something or other. And with that schedule number and the

1 date of the check and the check number, we could then go back to
2 our documentation of when we actually requested these checks be
3 issued for us, and look up that it was a check from a Navajo
4 account holder or an Albuquerque region account holder. And
5 then we would handwrite the information, like you see on page
6 two here, that it is for the Navajo region and it should be
7 posted back to a specific account.

8 Q. The notations here, does it show an account number, your
9 handwriting on this page two?

10 A. No, this doesn't show an account number, but it shows the
11 general ledger information. So according to the general ledger,
12 we should post to the Navajo area, which is N00, and it should
13 go into appropriation 6039. It should be posted to an
14 individual Indian's account, which is the 0611, because in the
15 general ledger individual Indian accounts were 206.11. That was
16 their general ledger account number.

17 And then, when you post to the general ledger and to
18 the individual 's account, you want to quote a document number.
19 So the document number we gave to these types of transactions
20 was a TS, and then the next two digits, numbers 11, and then N,
21 9249. So 11 is the month, N means Navajo, and then the last
22 four digits are the number of this actual document.

23 In the upper right corner, you see a schedule number --

24 Q. On the document 312-9-249?

25 A. That's correct. So the last four numbers, 9249, are

1 actually part of this document number that we're creating. And
2 then you see a date; that's the date of the certification. And
3 then the ADF is the type of posting you're going to do in the
4 general ledger. Each number meant something in the general
5 ledger. And then \$1.43.

6 Q. Now, the next page of this exhibit, page three, you also
7 have handwriting notations on there. Correct?

8 A. That's correct.

9 Q. And there's essentially two lines of your notations?

10 A. That's correct.

11 Q. Does that show two different check amounts?

12 A. No. It shows two different regions that get postings. So
13 this schedule says there are three checks that were canceled, to
14 the total of 65.08. And, I don't know if it's one check or two
15 checks go to Albuquerque, which is the code M00, for 24.34. And
16 then one or two checks go to the Navajo area, for \$40.74.

17 Q. So this is again crediting the general ledger?

18 A. Correct.

19 Q. What about crediting the individual's account? Is there a
20 document or a form that was used for that purpose?

21 A. Yes. The second page to this form, that actually showed the
22 individual check number. So there would have been a three-line
23 report that showed certain check numbers. It would have listed
24 the individual check amounts. That information would have gone
25 to the Albuquerque area office and to the Navajo area office,

1 and it would be up to them to post to the individual's account
2 because they're the ones that had the system that would post to
3 the subsidiary or individual account.

4 Q. Now, Ms. Ramirez, during your work at, as you call, the
5 section of IIM, I believe the branch of IIM, did you have -- in
6 addition to the work that you've explained with regard to the
7 reporting on checks to Treasury and the information back from
8 Treasury, did you have other occasions to work on dealing with
9 problems with checks, either cashed, canceled, otherwise?

10 A. Yes.

11 Q. And did you work with the area and the agency offices?

12 A. Yes.

13 Q. Are you aware of allegations, as I pointed out to the judge,
14 the allegations in this case that many checks were never cashed
15 or never reached the individual Indian beneficiaries?

16 A. Yes, I've heard that.

17 Q. Is that consistent with your experience?

18 A. No. According to the experience that I had in the branch of
19 IIM as an accountant and the branch chief, a lot of the -- not a
20 lot, but the agency offices on occasion would give us a call and
21 express to us that they were having trouble making a
22 distribution to individual Indian account holders. Like, maybe
23 their system went down. And so they had to -- when you're going
24 to issue checks to individuals, you have to know who you're
25 going to issue the checks to. So that means you look up the

1 ownership to see who gets how much of this distribution.

2 Well, if the ownership system is down, then you have to
3 either do it by hand or wait for that to come back up, and then
4 you make the distribution and then you actually issue checks.

5 If you -- sometimes an account holder themselves would
6 call Albuquerque and speak to us and say that "Christmas is
7 coming, the checks haven't been issued from blank-blank agency,
8 what's the holdup? What's the problem?" So we would turn
9 around and call the agency back to see what the problem was. It
10 could have been any number of problems.

11 So they were aware that they should be getting a check,
12 and then they were aware that it was taking a long time for the
13 checks to actually be issued. Sometimes once the checks were
14 issued, every so often we would get a call from an account
15 holder who would say that they got their check but it was
16 different than so-and-so. And they were pretty sure they had
17 the same ownership, so: Why is his check 50 cents higher than
18 mine?

19 So they were also aware that they should be getting a
20 certain dollar amount, as well. I heard a lot of those phone
21 calls, I talked to the agency staff across the United States and
22 the regional office staff that worked in these branches of IIM
23 across the United States, that were also aware of these types of
24 calls.

25 They knew the money was coming.

1 Q. Now, we've mentioned the number of regions and the number of
2 areas. Do you know how many agency offices there were in that
3 time period when you were working at the branch of IIM?

4 A. 90-something. I don't recall the exact number.

5 Q. And primarily the western United States, west of the
6 Mississippi?

7 A. Yeah, the majority of them were west of the Mississippi,
8 yes.

9 Q. Ms. Ramirez, do you -- you've been working at the Department
10 of Interior since you started there in 1986. Correct?

11 A. Correct.

12 Q. And you've either been working at BIA or OST. Correct?

13 A. Correct.

14 Q. You were at OHTA for a while before it was part of OST. Is
15 that fair to say?

16 A. Correct.

17 Q. So essentially it's BIA, OHTA, and the office of special
18 trustee, OST, correct, that you've worked for?

19 A. Yes.

20 Q. Did you become involved with work related to this Cobell
21 litigation at some point in your career?

22 A. Yes.

23 Q. Do you remember when that was?

24 A. In 1986, when the suit was filed.

25 Q. 1996, sorry.

1 A. 1996, when the suit was filed. I was involved then. And
2 before then --

3 Q. Do you remember what your first project was related to this
4 litigation?

5 A. Yes. There was -- initially, there was a Phoenix test to
6 find documentation for a specific number of account holders. I
7 think it was 50 account holders, and I was in charge of that
8 search effort.

9 And then later on there was what we referred to as
10 Paragraph 19, and I was in charge of searching for the documents
11 for the Office of the Special Trustee for Paragraph 19.

12 Q. And at the time you were working -- were you working for the
13 branch of past reconciliation when you were doing the
14 Paragraph 19 work?

15 A. I'm pretty sure. It was either that or branch of litigation
16 support.

17 Q. Now, what was your role in those two branches?

18 A. Initially I was -- I think the position was like a program
19 analyst, and then eventually branch chief.

20 Q. Now, Ms. Ramirez, I would like to draw your attention to
21 Defendant's Exhibit 215.

22 MR. KRESSE: Your Honor, here we have a series of
23 documents that essentially run together. So we'll identify them
24 each individually, but there's a series here of nine essentially
25 transactional documents that Ms. Ramirez will talk about.

1 BY MR. KRESSE:

2 Q. Ms. Ramirez, looking at the first of these documents,
3 Defendant's Exhibit 215, can you identify that document?

4 A. Yes. That is an oil and gas lease.

5 Q. Now, how did you -- I'm sorry.

6 Where did this document come from, do you know?

7 A. It probably came from the Anadako area office. You'll see
8 the heading on the top there. They were the ones that created
9 it.

10 Q. And at some point did you come into possession of a copy of
11 this document?

12 A. Yes.

13 Q. And what was the purpose of that?

14 A. It was to put together a presentation to the attorneys, the
15 plaintiffs, Justice, Solicitor's Office, to show the audit trail
16 or accounting process of a transaction. And that was while the
17 Paragraph 19 document search effort was under way.

18 Q. So when you say plaintiffs' attorneys, you're referring to
19 plaintiffs' attorneys in this case. Correct?

20 A. That's correct.

21 Q. Now, looking specifically at this document, how many copies
22 had been generated of this document when it was originally
23 created?

24 A. Let's see. The realty office would have a copy; they would
25 also provide a copy of it to the land title records office. And

1 there may even be a copy in the individual Indian account jacket
2 file. So that may be three.

3 Q. And who gets the original in this case?

4 A. The original, I thought the branch of realty at the agency
5 office retained that.

6 Q. Now, just paging through this lease, which is a four-page
7 document, just noting on the last page that the individual
8 information has been redacted. Correct?

9 A. That's correct.

10 Q. And do you know when that information was redacted?

11 A. Oh, when we were actually preparing this document for our
12 exhibit or presentation.

13 Q. Do you recall when the presentation was first done? Or
14 excuse me. The presentation was done, you said for the
15 attorneys?

16 A. Right. I don't recall the year. It was while the
17 Paragraph 19 document search effort was under way.

18 Q. Possibly 1999?

19 A. Yes.

20 Q. Then let's look at Defendant's Exhibit 206.

21 What is this document, Ms. Ramirez?

22 A. This is a bill for collection.

23 Q. What is the purpose of the bill for collection?

24 A. They used it in two different ways. They either used it as
25 a receipt type document, or they used it actually for a bill, to

1 bill someone. It was a seven-ply document, and they would
2 prepare who they were billing, so in this instance it's Sun Oil
3 Company. And then they would list the information, what they're
4 billing them for, lease 123 or 456, and a dollar amount, and
5 they would put the accounting information across the bottom.

6 So you see that 0630, and then the word "other," and
7 then in parens, "SD." That means special deposit.

8 Q. And this particular bill for collection, does it relate to
9 the oil and gas mining lease that was identified as Defendant's
10 Exhibit 215?

11 A. Yes, it does.

12 Q. You mentioned seven-ply. Essentially, you mean seven copies
13 of this document were created originally?

14 A. And more.

15 Q. And more?

16 A. Sometimes they would photocopy this document, and then you
17 would have photocopies of it as well.

18 Q. Where did those copies end up?

19 A. The original was sent -- I think original and one ply was
20 sent to the company itself. So Sun Oil Company would get two;
21 the realty office would retain one; the branch of IIM would get
22 one; the regional office would get one. I don't know if they
23 put one with the LTRO, Land Title Records Office. They may or
24 may not have.

25 And if for some reason somebody lost their copy, or it

1 was in the jacket file and they wanted it in this other file as
2 well, they would make a photocopy of it.

3 Q. Turning your attention to Defendant's Exhibit 222, can you
4 identify that document?

5 A. That's a schedule of collections.

6 Q. And what is the purpose of the schedule of collections?

7 A. It takes the different collections that were received within
8 a day by a collection officer, either at the agency or the area
9 office, and it sums them all up. So you'll see that second
10 column with a bunch of numbers that start out 22-something.
11 Those are all bill-for-collection numbers.

12 And then you see the names of the different businesses
13 in that next column, like Dewitt Brownback (ph) and Sun Oil,
14 Oklahoma Natural Gas, et cetera. And then you see all the
15 different dollar amounts.

16 So all of these are bills for collection for this
17 particular day, and they total to whatever the amount is at the
18 bottom there: 57,248.97.

19 Q. And looking at the third line, under the "Name of remittee,"
20 is that the column --

21 THE COURT: Mr. Kresse, excuse me.

22 MR. KRESSE: Sorry, Your Honor.

23 THE COURT: We need to take a break.

24 MR. KRESSE: Thank you, Your Honor.

25 THE COURT: We'll be in recess for 10 minutes.

1 (Recess taken at 11:28 a.m.)

2 THE COURT: Mr. Kresse, I've been thinking about the
3 way this testimony started and how I kind of took you off your
4 game plan.

5 Let me make a suggestion to all the lawyers here. I
6 wish we could do this in jury trials, but because it combines
7 sort of argument and facts at the same time, we can't do it in
8 jury trials.

9 It would be very helpful I think at the beginning of
10 almost any witness that you put on for counsel to orient me by
11 just giving me kind of an overview of what they think this
12 testimony is going to be about.

13 It kind of helps frame it, helps to understand it. It
14 is an unusual procedure for any trial, but in a bench trial like
15 this, I think we might experiment with it.

16 So proceed.

17 MR. KRESSE: Your Honor, I would be happy to. Even
18 though it's a little late in the game, I'll give you a little
19 forecast of what the future testimony will be.

20 THE COURT: Good. Good.

21 MR. KRESSE: First of all, Your Honor, as I indicated
22 when we started looking at these what I call transactional
23 documents - and Ms. Ramirez referred to as the audit trail
24 documents - when we finish up with those, we'll be discussing
25 the issue of mass cancellation of Treasury checks, which

1 occurred in approximately 1989 and which affected work at the
2 BIA in the early 1990's, with which Ms. Ramirez was the project
3 manager for trying to deal with cancellation of checks that went
4 back many years. And trying to reconcile those, or trace those
5 back to the individual Indians' accounts where the Treasury
6 said, okay, now we're going to cancel all these checks that are
7 really, really old.

8 THE COURT: Okay.

9 MR. KRESSE: All right. After that, we will go to
10 talking about what Ms. Ramirez has been involved in for
11 essentially the last three years, which is her current position
12 of on-site manager of the American Indians Records Repository in
13 Lenexa, which Your Honor's expressed interest in visiting. And
14 we have a series of photographs that hopefully will represent a
15 good portion of what goes on there. And Ms. Ramirez will
16 describe them in whatever detail Your Honor, you know, is
17 interested in.

18 But in any event, she will talk about the facility and
19 the processes and the people that work there in referencing
20 those photographs, and also some of the types of documents that
21 exist there that you might not otherwise be aware of.

22 So that's where we're headed.

23 THE COURT: Okay. Good. Thank you.

24 MR. KRESSE: You're welcome.

25 BY MR. KRESSE:

1 Q. Now, Ms. Ramirez, when we took our break, we were looking at
2 Defendant's Exhibit 222, the schedule of collections. Do you
3 recall that?

4 A. Yes.

5 Q. I want to direct your attention to the third, I guess it's
6 receipt number on that document, 2220. Do you see that, 2220,
7 Sun Oil Company?

8 A. Yes. Yes, I see it.

9 Q. And then in the column on the right-hand side, the amount of
10 \$24,300.01. Correct?

11 A. That's correct.

12 Q. Is that the same transaction that is referenced on the bill
13 for collection, which is Defendant's Exhibit 206, the \$24,000?

14 A. Yes.

15 MR. KRESSE: And can you go back to --

16 A. 206.

17 BY MR. KRESSE:

18 Q. Take a look at 206, the bottom right-hand corner.

19 A. Yes, that's it.

20 Q. So we have the same amount on both those documents.
21 Correct?

22 A. That's correct.

23 Q. Then the following exhibit, Defendant's Exhibit 223, can you
24 identify that document?

25 A. This is like a summary document that the regional office

1 would prepare. And I shouldn't say would prepare like it's a
2 normal thing.

3 If the regional office is the one that went to the
4 bank, then they would have to prepare something like this.
5 However, if an agency had the ability to go to the bank, meaning
6 that there was a fed reserve bank close, then they would just
7 walk their deposit to the bank and you would -- this trail would
8 end with that schedule of collections that we just saw, and you
9 wouldn't have this document here.

10 But in this scenario, the Anadarko area office is the
11 one that actually went to the bank. So they had their agencies,
12 like Anadarko Agency and Pawnee Agency and Concho Agency,
13 et cetera, send their collections to them and they would go to
14 the bank.

15 So in order to tie or link these different schedules of
16 collections together, you would have one for Anadarko, one for
17 Pawnee, one for Concho, et cetera. You would do this kind of
18 summary sheet like this, and all their different collections
19 would be on this sheet and it would be totaled at the top up
20 there, where you see that amount, I think it's 72223.91. Yes.

21 So all the collections from these different agencies
22 total to that amount there, and that should be the amount of the
23 deposit ticket when they go to the bank.

24 Q. Before we get to the deposit ticket, this particular
25 document, do you know how many copies were normally prepared?

1 A. Let's see. The regional office would have one, they would
2 probably mail one back to each of those agencies. So there are
3 one, two, three, four, four agencies there. That many.

4 Q. And each agency would get the same document. Correct?

5 A. Right.

6 Q. Even though it applied to multiple agencies?

7 A. Correct. Because if you're at the agency and you know you
8 sent \$154.98 to your regional office for deposit, you need some
9 kind of proof in your files that it actually got deposited.

10 So this would be one of those things.

11 Q. Turning to Defendant's Exhibit 208, this particular form has
12 the title "Certificate of Deposit." Correct?

13 A. That's correct.

14 Q. But you referred -- how do you refer to it, or did you refer
15 to it?

16 A. We always called them deposit tickets.

17 Q. The deposit ticket here is for the amount of \$72,223.91.
18 Correct?

19 A. That's correct.

20 Q. And that ties into the total on the previous Exhibit DX-223,
21 the collection document?

22 A. Yes.

23 Q. Now, the deposit ticket, what's the actual purpose of this
24 document?

25 A. This is what the bank wanted when you were making your

1 deposit. You would have to actually fill one of these out to
2 accompany all of the negotiated -- or the checks that you were
3 depositing, you would have to have a deposit ticket to go with
4 it.

5 Q. How many copies of the deposit ticket were normally
6 prepared?

7 A. I thought it was a three-ply document. The original went to
8 the bank; one copy was retained by whomever walked it to the
9 bank, in this case it's the Anadarko area office; and then a
10 copy went to central office in Albuquerque for reporting
11 purposes.

12 Q. What about the individual agencies that were affected by
13 this?

14 A. Oh, they probably would have gotten a copy of it as well.

15 Q. Would that have been attached to the previous exhibit?

16 A. Correct. In addition to that sheet that summarized, they
17 would have gotten something like this as well.

18 Q. DX-223. Correct?

19 MR. KRESSE: I'm sorry, could you put the DX-223 back
20 up?

21 A. Yes, it would accompany that.

22 BY MR. KRESSE:

23 Q. Turning your attention to DX-228, can you identify this
24 document?

25 A. It's a title status report. We called them TSRs.

1 Q. What was the purpose of this document?

2 A. It would show for a particular piece of land, who the
3 different owners were and their fraction or portion of the
4 interest in that land.

5 Q. Now, this document is dated in the upper right-hand corner.

6 MR. KRESSE: If we could zoom in on that.

7 A. Yes.

8 BY MR. KRESSE:

9 Q. March 10th of 2005. Correct?

10 A. Yes.

11 Q. Much later than the documents we've been looking at in the
12 last several minutes. Correct?

13 A. That's correct.

14 Q. So from what time period -- obviously this one was -- was
15 this the date it was actually printed?

16 A. Yes, that is the print date.

17 Q. How far back in time was this type of a report, the TSR,
18 generated in this fashion?

19 A. I saw them back into the '70's.

20 Q. What system was used to generate the TSR?

21 A. They called it the LRIS, Land Records Information System.

22 Q. What was the purpose of the Title Status -- or the TSR for
23 purposes of the audit trail that you've been describing?

24 A. Once the money was collected, then you would have to
25 distribute to whomever the owners are. And TSR is what helped

1 you make that distribution, because you see the proportionate
2 shares down the right-hand side of this report.

3 Q. Who specifically at the BIA, or -- I'm sorry.

4 Who specifically would use the TSR to make that
5 distribution?

6 A. The agency personnel, either the realty staff or the IIM
7 staff.

8 Q. How would they get a copy of the TSR?

9 A. They either had one on file that they kept, or they would --
10 they would want to get the most recent version of it, because
11 people are being born and dying every day, so you would want to
12 know what the title -- or what the status of the owners is at
13 that point in time.

14 So you would request -- they would call the LTRO, Land
15 Title Records Office, and request a current print of this
16 report. And then that LTRO would send a print job to a printer
17 that they had at their agency, or wherever they were at, and
18 then they would utilize that.

19 Q. Prior to the use of the LRIS system, do you know what system
20 was used to create a similar type report to the TSR?

21 A. There was an earlier system before LRIS. I don't remember
22 what the name of that one was, but I know it was an automated
23 system.

24 Q. Do you know what was used prior to the first automated
25 system?

1 A. I don't understand.

2 Q. Well, you needed title status reports of some kind. Right?

3 A. Right.

4 Q. And these previous exhibits, some of them are dated in 1969.
5 Correct?

6 A. Correct.

7 Q. Do you know what would have been used instead of the TSR
8 that we have here?

9 A. They had -- I thought they referred to them as A&E cards,
10 allotment and I don't remember what the E stood for. And so
11 before they were automated, they had a lot of these, they were
12 about the size of an index card, that they retained.

13 Q. They, being whom?

14 A. They, the agency and the regional offices. And they would
15 keep track of the different pieces of land and ownership on
16 these different cards.

17 Q. Turning to Defendant's Exhibit 214, this document is titled
18 "Journal Voucher." Correct?

19 A. That's correct.

20 Q. Can you explain the purpose of the journal voucher?

21 A. A journal voucher transfers money from one account to
22 another within the same appropriation.

23 Q. When you say appropriation, what do you mean by that?

24 A. Treasury keeps track of the different accounts you have with
25 them by an appropriation, or an account number.

1 Q. And in the case of IIM, do you know what the account number
2 was?

3 A. It was all one account number, 6039.

4 Q. And is that the same as 14X-6039?

5 A. That's correct.

6 Q. In this case, can you explain what this journal voucher is
7 showing?

8 A. Can you blow it up a little bigger? The middle part where
9 it says Sun Oil, Sun Oil, and then the \$3,000?

10 Q. Is that large enough?

11 A. Yes. This is transferring money from a Special Deposit
12 Account. Special Deposit Accounts were like holding or
13 administrative accounts where you would put the funds were
14 collected. And then once you had your ownership or distribution
15 ready, then you would distribute out of this Special Deposit
16 Account into the different individual accounts for Joe or Betty
17 or Bob or Sue.

18 So in this scenario they're moving money out of two
19 different -- well, I don't know that it's two different
20 accounts, but they're moving two collections. You see the 2220
21 on the left and then the 2405 on the left? Those are bill for
22 collection numbers that it's referring to, and so you're
23 actually distributing money from these two bills for collection
24 to an individual's account. And I know that because it says
25 206.11 on the left side.

1 Q. At the bottom of the screen?

2 A. Correct. And 206.11 means an individual Indian account.

3 Q. Does this document indicate which specific individual Indian
4 account?

5 A. No, it's been redacted.

6 Q. So that's the sort of bottom middle of the page on the
7 left-hand side where the black mark is?

8 A. That's correct. That would have had the individual's name
9 and their account number there.

10 Q. The upper right-hand corner of this document, handwritten
11 there's a date, May 9 of 1969. Correct?

12 A. That's correct.

13 Q. The typewritten entry on the left-hand side, 2220, do you
14 see that?

15 A. Yes.

16 Q. And then next to that, the date, March 28, 1969?

17 A. That's correct.

18 Q. What was that date, the March date?

19 A. That's probably the date of the bill for collection.

20 Q. Which we already looked at. Correct?

21 A. Correct.

22 Q. And then underneath that, there's another date for the 2405
23 item?

24 A. Yes.

25 Q. Do you see that?

1 A. Yes.

2 Q. And is that also supposed to represent the date of
3 collection?

4 A. It should be the date of the bill for collection.

5 Q. The date on the journal voucher represents what, the May 9
6 date?

7 A. That's the date that they would have actually made the
8 transfer, minusing the Special Deposit Account and plussing the
9 individual account.

10 Q. Turning to Defendant's Exhibit 212, this is a two-page
11 document. Can you identify this document?

12 A. Yes. This is a ledger card.

13 Q. Now, it doesn't say ledger card on the document, does it?

14 A. No. We referred to them as ledger cards, though.

15 Q. Does this roughly -- the image here -- excuse me. What was
16 the size of the ledger card?

17 A. They were about an eight-and-a-half by 11, sometimes a
18 little bigger than that. The back part of it was heavier card
19 stock material, and then there were two plies in front of it.
20 They would run -- or when they would post, they would post a
21 transaction to these cards, and after six months of posting,
22 they would pull the top copy off and mail that to an individual.
23 And that was their statement.

24 Then after another six months of posting, they would
25 pull the next ply off and mail that to the individual, and that

1 was their next statement.

2 But when you look at a lot of these ledger cards, you
3 see that they have more than one year of transactions posted on
4 the face of them. Well, now you're out of plies. What do you
5 do? They would photocopy and mail that to the individuals, and
6 that was their statement.

7 Q. And when you say "they," who are you referring to?

8 A. Whoever did the posting. If it was at an agency office,
9 then the agency would do it. If it was done at the regional or
10 area office, then they would do it.

11 Q. The page one of the ledger card represents, as you said,
12 multiple years. In this case, it looks like about five years of
13 transactions. Correct?

14 A. That's really tiny writing.

15 Q. I'm sorry.

16 A. '64 to whatever the bottom is, '69, yes.

17 Q. So 1964 through 1969?

18 A. That's correct.

19 Q. Now, the bottom of this page, the last transaction that
20 shows up, the left-hand column shows -- I'm sorry. Let's look
21 at the second to the last line.

22 A. Yeah.

23 Q. Credits, the second column from the right.

24 A. Uh-huh.

25 Q. And the last column, frankly, is the balance. Right?

1 A. That's correct. That's a running balance on the right-hand
2 side.

3 Q. But the credit column shows \$3,044?

4 A. Yes.

5 Q. And that ties back into the journal voucher transfer of
6 3,044. Correct?

7 A. That's correct.

8 Q. The date for that -- looking at the ledger card, the date
9 for that transaction shows May 9, 1969. Correct?

10 A. Yes.

11 Q. Which is the same date as on the journal voucher. Right?

12 A. Yes. You should see three things match when you see
13 posting; the date, the document number, and the dollar amount.

14 And in this scenario, it looks like all three match,
15 that JV number, 924, right after the date on the ledger card.

16 Q. Right.

17 A. That should be the journal voucher number on the journal
18 voucher we were just looking at.

19 Q. Let's go back and look at 214, Defendant's Exhibit 214, in
20 the upper right-hand, JV number. Correct?

21 A. That's correct.

22 Q. 924?

23 A. Yes.

24 Q. Then going back to Defendant's Exhibit 212, the second page
25 of that document, that starts with a transaction it looks like

1 in December of 1978. Does that seem accurate?

2 A. Yes, that's what it looks like.

3 Q. It's a little bit covered up by the form. Correct?

4 A. Yeah.

5 Q. How many copies of the ledger card would be kept internally?

6 You've already testified that there were -- a copy or a carbon
7 would be sent to the individual account holder every six months.
8 Correct?

9 A. Right. That's correct.

10 Q. Were there other copies of the ledger card kept?

11 A. Once you got down to the back copy, or the card stock one,
12 usually that was only retained at the office that was doing the
13 posting, normally an agency office.

14 If for some reason somebody wanted to see something on
15 the ledger card, then they'd make a photocopy of it and it could
16 end up in a file somewhere else for documentation purposes.
17 Regional office, maybe.

18 Q. Then going back to the second page of DX-212, in the middle
19 of the page, there's a transaction which appears to be dated
20 March 28, 1979 for \$1,200?

21 A. Either 28th or 26th of 1979.

22 Q. Can you tell from this document what kind of transaction
23 that is?

24 A. That's a check that's being issued.

25 Q. How can you tell that?

1 A. Because in that debits -- well, in the second column, the
2 document number.

3 Q. Right.

4 A. You see a number 5173491. That's a check number. And then
5 the 104.3 in the middle, the description, that's the cash
6 account in the general ledger.

7 So funds are leaving cash.

8 Q. And the amount here is \$1,200. Correct? For the check?

9 A. That's correct.

10 Q. Turning to Defendant's Exhibit 213, this is a three-page
11 exhibit. Are you familiar with this document?

12 A. Yes. We used to call these a 139-B.

13 Q. Although the form itself shows --

14 A. Has some other number on it, yes. Us old timers.

15 Q. And is it safe to say this is an application for a check?

16 A. Yes.

17 Q. The first page, anyway. Right?

18 A. Yes.

19 Q. Let's look at the second page of this document, exhibit.

20 A. Uh-huh.

21 Q. What does that page represent?

22 A. We call this a DDR, a daily disbursement report.

23 Q. What is the purpose of the DDR?

24 A. The DDR is to sum up all the checks that were created or
25 issued that day. And so on this report here, you see that

1 it's -- I think it's upper right corner, BO-6, BO-8.

2 Q. Above area/agency number?

3 A. Correct. That will tell you what office has actually
4 created the checks. And then you see that they did 101 checks,
5 because the number of checks says 101.

6 If you go a little to the left, you'll see that the
7 check numbers were from something something to something else, I
8 can't even read those numbers.

9 And if you go further down and to the right, maybe you
10 can zoom out a little bit. There you go. Then you'll see that
11 they were actually issuing checks out of individual Indian
12 accounts. That's the 206.11, to the tune of 12,000 something
13 dollars. And they were also issuing checks out of that special
14 deposit or holding account, 206.70.

15 Q. Where it says in parentheses, "suspense"?

16 A. Suspense, that's correct.

17 So the total of the checks for this day are 30,276.16,
18 and they voided two checks in the checks that they were issuing
19 for this day. You see those under that voided check section?

20 Q. Then the check series of -- you said you couldn't quite read
21 the numbers.

22 MR. KRESSE: If we could go back up and zoom in on
23 that, toward the upper left.

24 A. There you go. That looks like they would be 5173 something,
25 because the voids are 5173 something.

1 BY MR. KRESSE:

2 Q. And the previous document, which was the ledger card that we
3 were referencing the check for \$1,200 for March 28th of 1979,
4 should that check number referenced on the ledger card be
5 included within this range?

6 A. Yes.

7 Q. And in this case was it included within the range? Do you
8 want to look back at that?

9 A. Yeah, I don't recall the check number on that ledger card.

10 Q. Looking at the second page of DX-212, middle of the page.

11 A. Right. Yes, you see 5177895 was the check number. I
12 thought that was in that check range we just saw.

13 Q. 5173, is that the number?

14 A. No, go further down. I think it might be a 75.

15 Q. Well, we're bouncing back and forth between these exhibits.

16 A. Right. Right.

17 Q. In any event --

18 A. It's hard to read that number there.

19 Q. Let's go back. Let's stay with the DDR, DX-213, which is
20 what we're looking at.

21 Then the third page of that exhibit is what?

22 A. That's a check carbon for the check of \$1,200, the 5173491.

23 Q. So this should be the check that was referred to in the
24 ledger card. Correct?

25 A. Correct.

1 Q. And it's within the range -- the check number's within the
2 range on the previous page, which is the DDR. Correct?

3 A. That's correct.

4 Q. Do you know how many copies of -- you said this is a carbon.
5 Obviously, the original went to who?

6 A. To the individual Indian.

7 Q. How many carbons were there?

8 A. There were two plies to these checks.

9 Q. Where were the carbons retained?

10 A. One carbon was retained with whomever issued the check. If
11 it was the agency, they would keep it. And then the other
12 carbon would go to central office, which was in Albuquerque.

13 MR. KRESSE: Your Honor, that's the final document in
14 that series of documents. I just want to clean one thing up.

15 BY MR. KRESSE:

16 Q. The ledger card -- I'm sorry, the application for check, do
17 you know how many copies were kept or made of the application?

18 A. Let's see. One would have been retained in the individual
19 Indian's jacket file, and one would have probably been given to
20 them. I'm pretty sure they told me they would give one to the
21 individual Indian themselves. And then I --

22 Q. You're talking about who, the agency staff?

23 A. Yes. Whomever was writing the checks. If you're the
24 agency, there; if you're the regional office, there.

25 Q. And the same question regarding the DDR, which is page two

1 of this Defendant's Exhibit 213, the number of copies and where
2 they were retained?

3 A. Right. The DDR, the original would have gone to central
4 office Albuquerque, and then a copy would have been retained
5 with whomever is actually issuing the check, either the regional
6 office or the agency.

7 Q. Now, would any of this information go to Treasury?

8 A. No. The only thing that went to Treasury was that earlier
9 exhibit we looked at that showed the TFS 3510 form and the
10 printout and then a magnetic tape.

11 Q. Now, Ms. Ramirez, as part of your responsibilities working
12 for the section of IIM or the branch of IIM, did there come a
13 time when you became the project manager for something called
14 the mass cancellation project?

15 A. Yes, I did.

16 Q. Could you explain generally what that project was about?

17 A. There was an act, I think it was the 1987 Competitive
18 Equality Banking Act that passed that initiated what Treasury
19 called limited payability. Before this act, any Treasury check
20 that you issued was good forever. You could hold it 10 years
21 and then go and cash it at a bank. However, after this act,
22 they were only good for one year. And on the face of a Treasury
23 check it says, "void after one year" now.

24 So there was an effective date that came out with this
25 act of when all Treasury checks that were not limited payability

1 would be canceled.

2 Q. Do you recall -- I'm sorry. Do you recall what that date
3 was?

4 A. September 30, 1989. So any check issued September 30, 1989
5 and earlier was mass canceled if it had not been negotiated or
6 if it hadn't been voided, it was mass canceled no later than
7 April of '91.

8 Q. Do you recall how far back those checks that had essentially
9 unlimited payability, do you recall how far back in time those
10 went?

11 A. Yes. I heard and saw in some documentation to 1954.

12 Q. So essentially this covered -- this mass cancellation
13 covered about 35 years worth of checks. Correct?

14 A. Correct.

15 Q. Do you recall how many checks, IIM checks, were affected by
16 the mass cancellation?

17 A. 56,000, 60,000.

18 Q. Is there documentation --

19 A. Yes.

20 Q. -- that reflects that information?

21 A. Yes.

22 Q. We'll walk you through some of that, Ms. Ramirez.

23 A. Uh-huh.

24 MR. KRESSE: The first exhibit I'd like to put up would
25 be Defendant's Exhibit 231.

1 BY MR. KRESSE:

2 Q. This is a 19-page exhibit, it's identified on the first page
3 as bulletin number 90-03.

4 Ms. Ramirez, do you know what this bulletin refers to
5 and who issued it?

6 A. Yes. Treasury issued it and it's referring to the limited
7 payability.

8 Q. You indicated the subject here on the first page states
9 limited payability. Did it also talk about the mass
10 cancellation of all the old checks?

11 A. Yes, it actually states when and how Treasury is going to
12 mass cancel Treasury checks.

13 Q. Looking at the fourth page of this exhibit, the paragraph
14 starting with the letter C. Do you see that paragraph?

15 A. Yes.

16 Q. Do you know -- do you recall what the importance or purpose
17 of that paragraph was?

18 A. This told us that no later than April of '91, Treasury would
19 mass cancel any check that had not been negotiated or voided
20 that was dated September 30 of '89 or earlier.

21 THE COURT: What's the date of this document?

22 MR. KRESSE: I'm sorry, Your Honor. The date of the
23 document is I think reflected on the last or second last page.
24 In fact, it is. It's on page 19. It's October 1, 1989.

25 THE COURT: Okay. I thought I saw a later date on it.

1 Go ahead.

2 BY MR. KRESSE:

3 Q. Now turning back to --

4 MR. KRESSE: Yeah, Your Honor, there is a later date.

5 It's on the first page, retention -- there's a retention date,

6 April 30, 1992.

7 THE COURT: Oh, okay. All right.

8 BY MR. KRESSE:

9 Q. Looking back at page four, paragraph C, there's the last two
10 sentences which state: "The monies will be applied by Treasury
11 as required in Public Law 100-86, Section 1003. No monies will
12 be available to agencies from this cancellation."

13 Do you recall what the relevance of those two sentences
14 is?

15 A. Yes. That meant that Treasury, after canceling or mass
16 canceling these checks would retain the funds and not return
17 them to the Bureau of Indian Affairs.

18 Q. But this law and this bulletin applied to more than just the
19 Bureau of Indian Affairs. Correct?

20 A. To all agencies.

21 Q. So what did -- do you recall what Interior and the BIA did
22 about this?

23 A. Yes. Initially, the Bureau of Indian Affairs wrote to
24 Treasury to say that these funds that were issued under
25 disbursing symbol, primarily under disbursing symbol 4844 were

1 for individual Indians and Trust funds, not appropriated funds.

2 And therefore, should not be subject to this public law.

3 Treasury later wrote back and said, it's not the fact
4 that the public law something or other is applicable to you,
5 it's that under the disbursing authority that you have requested
6 from Treasury, under that authority, that is what gives Treasury
7 the ability to cancel and retain those funds. Not where the
8 funds came from, but the authority itself.

9 Q. And I asked you before about the number of checks that were
10 affected, or BIA IIM checks. Do you recall how much money, at
11 least as far as Treasury was concerned, was involved with those
12 tens of thousands of checks?

13 A. For all agencies or for Indian?

14 Q. Just the IIM checks.

15 A. 1.9 million was affiliated with individual Indians.

16 Q. And do you know what the number was government wide?

17 A. Government wide, it was a very large number, 10 billion,
18 maybe.

19 Q. Let's look at Defendant's Exhibit 229. And this is a
20 two-page letter from Jim Paris, chief, branch of Trust Fund
21 Accounting, to Ronald Nervitt at the Department of Treasury,
22 assistant commissioner for information systems.

23 Do you recognize this document?

24 A. Yes.

25 Q. Do you know what the purpose of this letter from Mr. Paris

1 was?

2 A. Yes. He was requesting some information from Treasury
3 regarding canceled checks, and the disbursing symbol 4844.

4 In the reporting process, where the BIA would report to
5 Treasury, these are the checks we have issued across the United
6 States, Treasury would return reports back that would show the
7 status of these checks, whether they were paid or negotiated,
8 whether they were voided, et cetera.

9 But there was a piece of information that wasn't
10 necessarily getting back to the BIA that Treasury wasn't
11 providing. And in that second paragraph there, you see it looks
12 like it's kind of highlighted, canceled checks for our ALC: "We
13 are missing a Treasury report that lists the canceled checks for
14 our ALC. Without this information, we cannot account for all
15 our Trust funds."

16 Q. Now, in this paragraph, the term ALC is used. What does ALC
17 mean?

18 A. Agency location code.

19 Q. And number here is 4844?

20 A. That's correct.

21 Q. And is that also the disbursing symbol for BIA?

22 A. Yes, that's correct.

23 Q. Is this letter referring to canceled checks generally or the
24 checks that were mass canceled? And I'm sorry, let's back up
25 for a second.

1 Can you tell the date on this document?

2 A. No, I can't see the top of it. There it is. 1990. So in
3 February of '90, this is before mass cancellation.

4 Q. Actually, it's after. Right? 1989?

5 A. Well, they mass canceled, but Treasury said that they would
6 actually do the mass canceling no later than April of '91.

7 So I don't think it actually occurred on September 30,
8 '89, it was just the date on the face of the checks.

9 So before this, in February of '90, we, the Bureau of
10 Indian Affairs, were writing to Treasury to say that we need
11 this one piece of information, just give us all -- a list of all
12 the canceled checks. When you give us information back, you
13 show us what's been negotiated, you show what is voided, but
14 we're not getting this information, the canceled checks.

15 Q. And at this time, the signator of this letter, Jim Paris,
16 was he your boss?

17 A. Yes.

18 Q. Let's look at the next document, Defendant's Exhibit 230.
19 And this is also a letter. This one is from David A. Ingold,
20 I-N-G-O-L-D, indicating that he's the chief counsel at the
21 Treasury financial management service.

22 And I believe a few moments ago you were talking about
23 how the BIA got an opinion or was informed by Treasury that the
24 money was not coming back to the IIM accounts. Correct?

25 A. That's correct.

1 Q. Is that the letter -- does this letter reflect that position
2 by Treasury?

3 A. Yes, that's exactly what it says.

4 Q. The letter here, the individual it's addressed to Eddie
5 Brown, assistant Secretary of Indian Affairs. Correct?

6 A. That's correct.

7 Q. And looking to the next exhibit, Defendant's Exhibit 209,
8 that -- on the top it indicates it's a facsimile and the date is
9 July 17, 1992. Are you familiar with this document?

10 A. Yes.

11 Q. And Mr. Donald Gray, chief, division of Trust funds
12 accounting is the signator. Correct?

13 A. That's correct.

14 Q. In July 1992, were you working for Mr. Gray?

15 A. Mr. Gray was the division chief and Jim Paris was the branch
16 chief. And I was under that.

17 At some point, it became -- IIM became a branch, and
18 the division of Trust funds accounting became an office, so
19 everything got elevated.

20 But I was working for Don Gray and Jim Paris.

21 Q. This letter does -- or what is the purpose of this letter,
22 I'm sorry, for Mr. Gray?

23 A. It's to request from Treasury a download of all the data
24 that Treasury had, for the checks that were mass canceled. We
25 needed to know what check number, what dollar amount was

1 actually mass canceled by Treasury. So we're making this
2 request to them.

3 Q. And the reason you want this information from Treasury is
4 what?

5 A. Is because we had no other information from Treasury to know
6 what was actually canceled by them. That was the 1990 letter
7 you saw earlier.

8 Q. Right. But ultimately, with that information, what was the
9 goal of BIA, if you found out in fact, which checks were
10 canceled?

11 A. Then we knew which checks came out of which accounts, and
12 therefore to repay them, we could do that.

13 Q. To recredit the accounts?

14 A. Recredit the accounts, correct.

15 Q. And the first sentence refers to the check payment and
16 reconciliation branch. Does that refer to -- that's to the
17 Department of Treasury. Correct?

18 A. That's correct.

19 Q. And check payment and reconciliation, is that a term that
20 you're familiar with?

21 A. Yes.

22 Q. And sometimes referred to CP&R?

23 A. CP&R.

24 Q. And you're familiar there's a CP&R system. Right?

25 A. Yes, there is a system called CP&R.

1 Q. So the magnetic tapes that we talked about earlier this
2 morning, do you know whether that information went into the CP&R
3 system?

4 A. From what I know, it was from the CP&R system.

5 Q. But the information that you sent to Treasury, in other
6 words?

7 A. Oh, yes. Yes, they would load it on to their CP&R system.

8 Q. At the bottom of this Defendant's Exhibit 209, there's a
9 number of cc's for this letter.

10 A. Yes.

11 Q. K. Ramirez is referred to there. Correct?

12 A. That's me.

13 Q. And it indicates COTR, looks like mass cancel project.
14 Correct?

15 A. That's correct.

16 Q. What does the COTR refer to?

17 A. Contracting Officer's Technical Representative. We used an
18 accounting firm to assist us on this project, and the COR, the
19 Contracting Officer's Rep, was Don Gray, and I was the COTR,
20 Contracting Officer's Technical Rep.

21 Q. So what was your role -- I'm sorry. Let's start with first,
22 who was the contractor?

23 A. Contractor was Soza & Company.

24 Q. S-O-Z-A?

25 A. That's correct.

1 Q. And your role as COTR?

2 A. Was to ensure that Soza & Company was providing what we had
3 contracted them to do, and to provide the deliverables that we
4 were asking of them.

5 Q. The bottom of this document has a handwritten note on it,
6 attachment six. Is that your handwriting?

7 A. Yes, it is.

8 Q. And then looking at Defendant's Exhibit 210, this is letter,
9 again Mr. Nervitt of the Treasury Department writing to
10 Mr. Gray. Correct?

11 A. That's correct.

12 Q. The date is July 29, 1992. Right?

13 A. Yes.

14 Q. And the bottom of the page, there's a received stamp. It's
15 hard to tell what the date is, but it's July. Correct?

16 A. July of '92, yes.

17 Q. And on here there's a handwritten annotation, "cc:
18 K. Ramirez"?

19 A. Uh-huh.

20 Q. OTFM. What is OTFM?

21 A. Office of Trust Funds Management.

22 Q. Now, does this refer back to what you were saying when the
23 division changed to an office?

24 A. Uh-huh. Yes.

25 Q. And then also underneath your name, looks like there's a

1 reference to Soza. Correct?

2 A. Yes. C. Otal is Carlos Otal. He was an accountant with
3 Soza & Company.

4 Q. What happened with this letter?

5 A. This letter actually accompanied a bunch of minireel tapes
6 from Treasury, that this is where they're providing us now, the
7 data of all the checks that were mass canceled, not just for the
8 Bureau of Indian Affairs but for all federal agencies across the
9 United States.

10 Q. So what did you do to figure out which checks were the IIM
11 checks out of all of those agencies?

12 A. Well, we first started with the disbursing symbols, because
13 that was a piece of the information that was provided on these
14 mag tapes. They gave a disbursing symbol, a check number, and a
15 dollar amount, and so we knew that our disbursing symbol was
16 4844.

17 In addition, there were other disbursing symbols that
18 had been used for individual Indian checks.

19 Q. And when you say other disbursing symbols besides 4844, in
20 July of 1992, were other disbursing symbols being used within
21 BIA?

22 A. No. No, early on in the Bureau's life, the agency
23 superintendents that were across the United States had a
24 one-on-one relationship with Treasury where they would issue
25 Treasury checks under their own disbursing symbol.

1 So someone at Agency A had a symbol, Agency B had a
2 symbol, Agency C had a symbol, and they reported and dealt with
3 Treasury directly for whatever checks that they were issuing.

4 Eventually they got consolidated into one disbursing
5 symbol, 4844, for the entire United States, all the agencies,
6 all the reGENCY offices, et cetera, and then there was one
7 disbursing agent that was responsible for reporting to Treasury
8 all of the checks that were being issued across the United
9 States. That's where you get the title ISSDA, Indian Service
10 Special Disbursing Agent.

11 Q. Do you know when the consolidation to just the one
12 disbursing symbol occurred?

13 A. No, I don't. I don't know that.

14 Q. And again, at the bottom of this document, there's
15 handwritten notation, attachment eight. Correct?

16 A. That's correct.

17 Q. And that's your handwriting?

18 A. Yes.

19 THE COURT: Is this a good time for a lunch break?

20 MR. KRESSE: Yes. Thank you, Your Honor.

21 THE COURT: We'll be in recess for an hour, please.

22 (Recess taken at 12:31 p.m.)

23

24

25

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Rebecca Stonestreet, certify that the foregoing is a
correct transcript from the record of proceedings in the
above-entitled matter.

SIGNATURE OF COURT REPORTER

DATE